

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

**CRA-S-1674-SB of 2004 (O&M).
Date of Decision: 06.09.2016.**

GURBHEJ SINGH AND ANOTHERAPPELLANTS.

VERSUS

STATE OF PUNJABRESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Appellant No.1 died and the appeal qua appellant No.1 abated
vide order dated 21.07.2016.

Mr. Harshit Sethi, Advocate for
Mr. Vikram Chaudhri, Sr. Advocate
for appellant No.2.

Mr. Surjeet Singh Chaudhary, Deputy Advocate General,
Punjab.

SNEH PRASHAR, J.

CRM-26103-2016

Prayer in this application is for placing on record the medical
record and discharge certificate of appellant No.2 Sawinder Singh.

The documents are taken on record, subject to all just
exceptions and the application stands disposed of.

CRA-S-1674-SB-2004

This appeal was preferred by appellants Gurbhej Singh and
Sawinder Singh alias Surinder Singh, assailing the judgment of conviction
and order of sentence dated 09.08.2004 recorded by learned Additional
Sessions Judge (Adhoc), Amritsar, in case bearing First Information Report

No.180 dated 20.07.2002 registered at Police Station City, Tarn Taran vide which they (appellants) were convicted and sentenced as under:-

Name of accused	Nature of offence	Sentence awarded
Gurbhej Singh	U/s 304(2) of the Indian Penal Code (for short, "I.P.C.").	R.I. for ten years and to pay fine of Rs.1000/- and in default to further undergo R.I. for one month.
Sawinder Singh	U/s 304(2) read with Section 34 I.P.C.	R.I. for ten years and to pay fine of Rs.1000/- and in default to further undergo R.I. for one month.

The allegation of the prosecution against the appellants which led to registration of the case against them was as under:-

Sukhwinder Singh (since deceased) and his uncle Sawinder Singh (appellant) were neighbours. There was an electricity connection installed in the house of Sukhwinder Singh whereas there was no such connection in the house of Sawinder Singh and he used to illegally derive electricity to his house from the main electricity wire passing over the house of Sukhwinder Singh, which caused disturbance in the supply of electricity to the house of Sukhwinder Singh. Many a times Sukhwinder Singh protested to the mischief done by Sawinder Singh and his son Gurbhej Singh because of which they quarrelled with him and abused him. They also instigated Bholi wife of Kashmir Singh to abuse Sukhwinder Singh. The matter was reported and was got compromised by the respectables of the village. Despite that Sawinder Singh continued to extract electricity through the illegal connection. Sukhwinder Singh, being a truck driver, often used to remain away from his house and in his absence Sawinder Singh created problem and abused his family members. Manjit Kaur wife of Sukhwinder

come home about five days prior to the day of occurrence which took place on 20.07.2002.

On 20.07.2002 at about 9:00 a.m., Manjit Kaur and Sukhwinder Singh were standing in the street going by the side of their house. Jasbir Singh, younger brother of Sukhwinder Singh, was also there. In the meantime, Gurbhej Singh, having a knife in his hand, came there alongwith Sawinder Singh. Mango, Bitti and Jaswinder Kaur exhorted and instigated their co-accused to do away with Sukhwinder Singh to teach him a lesson for not allowing them to use the illegal electricity connection. Sawinder Singh caught Sukhwinder Singh in his arms and Gurbhej Singh attacked him with a knife blow that hit on his right thigh. Having suffered injury, Sukhwinder Singh fell down and the assailants fled away.

Sukhwinder Singh was rushed to Civil Hospital, Tarn Taran where he succumbed to the injury. While the injured was being taken to the hospital, Sub Inspector Shamsheer Singh met them on the way and accompanied them. After Sukhwinder Singh died, SI Shamsheer Singh recorded the statement (Ex.PE) of Manjit Kaur, on the basis of which First Information Report Ex.PE/2 was registered. The investigation was carried out. Inquest report was prepared. The dead body was sent for postmortem examination. Statements of witnesses were recorded. The appellants were arrested on 22.07.2002. Appellant No.1 Gurbhej Singh, in pursuance of his disclosure statement (Ex.PJ), got recovered a knife (Ex.P3) from the courtyard of his house which he had used during the commission of offence.

After completion of investigation and other formalities, the appellants alongwith co-accused Mango, Jaswinder Kaur alias Jas and

Appellant No.1 Gurbhej Singh was charge-sheeted under Section 302 I.P.C. and appellant No.2 Sawinder Singh and the other co-accused were charge-sheeted and subjected to face trial for commission of offence under Section 302/149 I.P.C.

To substantiate the charge, the prosecution examined as many as 11 witnesses namely, PW1 Head Constable Krishan Lal, PW2 Dr. Dilbagh Singh, PW3 complainant Manjit Kaur, PW4 Jasbir Singh, PW5 SI Lashkar Singh, PW6 Inspector Shamsheer Singh, PW7 Constable Gurmit Singh, PW8 Constable Nirmal Singh, PW9 MHC Naresh Kumar, PW10 Constable Manjinder Singh and PW11 Rishi Ram, Draftsman.

After closure of evidence of the prosecution, in their statements recorded under Section 313 of the Code of Criminal Procedure (for short, "Cr.P.C."), the appellants-accused denied the case of the prosecution and pleaded innocence and false implication due to personal enmity.

In defence evidence, DW1 Ajaib Singh was examined.

Analyzing the evidence available on record and the submissions made by learned Assistant Public Prosecutor and learned counsel representing the appellants-accused, learned trial Court acquitted Mango, Jaswinder Kaur and Sukhwinder Kaur giving them benefit of doubt, but convicted the appellants, as indicated above.

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 09.08.2004 passed by learned trial Court, the appellants preferred the instant appeal.

During pendency of the appeal, appellant No.1 Gurbhej Singh died on 24.10.2011 and vide order dated 21.07.2016 proceedings against

him were abated and appeal on his behalf was dismissed as such.

The submissions made by Mr. Harshit Sethi, learned counsel representing appellant No.2 Sawinder Singh and Mr. Surjeet Singh Chaudhary, learned Deputy Advocate General for the State of Punjab have been heard and record perused.

As per the prosecution story, there were two eyewitnesses of the occurrence, namely Manjit Kaur-wife and Jasbir Singh-brother of deceased Sukhwinder Singh. Both stepped into the witness box as PW3 and PW4 respectively and unequivocally gave a detailed narration of the occurrence during which appellant Sawinder Singh had taken deceased Sukhwinder Singh in his arms and his son Gurbhej Singh (since deceased) had given a knife blow to him hitting on his right thigh. Assailing the credibility of PW3 Manjit Kaur and PW4 Jasbir Singh, learned counsel for the appellant argued that it was the version of the prosecution that there was an outstanding dispute between the appellant and the deceased as the deceased accused the appellant of extracting electricity illegally from the main electric wire passing over his house. It was mentioned in the First Information Report that there used to be repeated quarrels between the two families. Once the matter was got compromised by the respectables of the village also. With the said inimical relationship in the backdrop, the testimony of PW3 Manjit Kaur and PW4 Jasbir Singh, wife and brother of the deceased, not corroborated by any independent person of the village, cannot be believed. The occurrence was alleged to have taken place at 9:00 a.m. on 20.07.2002 i.e. in the broad day light. The place of occurrence was also said to be in the street passing by the side of the house of the deceased. The quarrel must have attracted people from the neighbourhood but no independent person was named as eyewitness nor any was joined during

investigation to know the true facts. Only the interested witnesses were examined.

Learned counsel further argued that no evidence worth in its name was led by the prosecution to prove that the appellant used to extract electricity illegally from the electricity wire passing over the house of the deceased. There is nothing to indicate that he was ever penalized by the Electricity Board for any such act. In the First Information Report, it was mentioned that the respectables of the village had got a compromise effected between the parties but neither the complaint, if any, given to the Panchayat nor the compromise arrived at, were got proved in evidence. As such, the motive was also not proved.

Admittedly, deceased Sukhwinder Singh was nephew of appellant Sawinder Singh. Jasbir Singh, being brother of Sukhwinder Singh, was similarly related with the appellant. The eyewitnesses of the occurrence were none other than wife and brother of the deceased. The house of deceased was adjoining to the house of the appellant. There was quarrel between the appellant and the deceased over illegal extraction of electricity from the main electric wire passing over the house of the deceased by the appellant as it disturbed the electricity supply to the house of the deceased. The occurrence took place in front of their houses in the street. In said set of facts, it was natural that the family members of the deceased could only be the eyewitnesses as they were present with him when he was attacked on by the appellant and his son. The wife and brother of the deceased would be the last person to falsely implicate the appellant and his son, who were close relations, and to leave the actual culprit go scotfree. Both PW3 Manjit Kaur

accused but their deposition remained consistent and clear on all material particulars and nothing such could be derived from either of them which could cast a shadow of doubt on the veracity of the witnesses.

PW3 Manjit Kaur stated that none came at the spot when she removed her husband to the hospital. Similarly, PW4 Jasbir Singh stated that no other person came to the place of occurrence. When there was no other eyewitness of the occurrence, none from the village was required to be joined in investigation or was to be examined by the prosecution. Otherwise also, since it was a family flute, it appears, no resident of the village came out in support of either of the parties. In any case, as already observed above, there was no reason for the wife and brother of the deceased to have falsely named the appellant and his son as the assailants. As far as motive is concerned, the testimony of PW3 Manjit Kaur and PW4 Jasbir Singh that the appellant and his son quarrelled and abused the deceased because he protested against their action of illegally extracting electricity from the main electricity wire passing over his house, was not challenged by the appellant-accused during cross-examination. It was not even suggested to the witnesses that the appellant and his son had never used illegal means to extract electricity from the main wire. PW3 Manjit Kaur stated that the dispute between them and the appellant was got compromised by the respectables of the village and Bakshish Singh, the other uncle of her husband had taken the responsibility that the appellant-accused would not abuse them in future. Thereafter, the appellant-accused had stopped abusing personally but they were using Bholi wife of Kashmir Singh for that purpose. She also stated that on the day of occurrence they had convened

eyewitness account of PW3 Manjit Kaur and PW4 Jasbir Singh proved the motive as also the occurrence. Appellant Sawinder Singh caught the deceased and his son Gurbhej Singh gave a knife blow to him that hit on his thigh but unfortunately the injury proved fatal to the life of the deceased. Accordingly, learned trial Court rightly held appellant No.1 Gurbhej Singh guilty for commission of offence under Section 304(2) I.P.C. and appellant No.2 guilty for commission of offence under Section 304(2) read with Section 34 I.P.C. Appellant No.1 Gurbhej Singh has since expired and the appeal having been abated stands disposed of qua him vide order dated 21.07.2016.

Coming to the sentence part, learned counsel for appellant No.2 Sawinder Singh submitted that the appellant is about 75 years old and is suffering from various medical ailments including HCT reactive. He is taking constant treatment since 2012 and is virtually confined to bed.

From the medical documents placed on record, it appears that the appellant had taken treatment for some medical problem from Civil Hospital, Tarn Taran in November, 2012. As per the other medical documents, he was taken to hospital on 02.08.2016 for various tests etc. i.e. after counsel for the appellant had sought adjournment for producing some medical documents showing the current health status of the appellant. It does not appear that except for old age the appellant is suffering from any serious disease.

Considering the fact that the son of the appellant, to whom fatal injury suffered by the deceased was attributed, has since expired and the appellant is aged about 75 years, the sentence of rigorous imprisonment awarded to him is reduced to five years. Fine shall remain the same. With

the above modification in sentence, the appeal is dismissed.

The appellant is on bail in this case, his bail bonds shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convict arrested and commit him to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

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

(SNEH PRASHAR)
JUDGE

06.09.2016.
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Whether speaking/ reasoned	:	Yes
Whether Reportable	:	Yes