

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

(1)

**CRA-D-485-DB-2010
Date of decision: July 22, 2016**

Major Singh and others

.....Appellants

Versus

State of Punjab

.....Respondent

(2)

CRR-1928-2010

Salinder Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

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

Present: Mr. R.S. Cheema, Senior Advocate with
Ms. Sumanjit Kaur and Mr. Kartik Tayal, Advocates
for the convicts/appellants.

Mr. S.S. Dhaliwal, Addl. A. G., Punjab.

Mr. N.K. Manchanda, Advocate
for the complainant-Salinder Singh.

GURMIT RAM, J.

1. The above noted criminal appeal has been preferred by the
abovesaid appellants assailing judgment of conviction dated 19.04.2010
and order of sentence dated 22.04.2010, delivered by the Court of learned

Additional Sessions Judge, Ferozepur in criminal case bearing FIR No.200 dated 08.12.2005 registered under Section 302 read with Section 34 of the Indian Penal Code (“IPC” - for short), Police Station Mallanwala vide which appellant No.1-herein (accused-Major Singh) was convicted for the offence punishable under Section 302, IPC, whereas his co-appellants No.2 and 3-herein (accused Gurmej Singh and Baldev Singh) were convicted for the offence under Section 302 read with Section 34, IPC, and were awarded the sentence as detailed below:-

Major Singh	Under Section 302, IPC.	To undergo imprisonment for life and to pay a fine of ₹20,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year.
Gurmej Singh & Baldev Singh	Under Sections 302/34, IPC.	To undergo imprisonment for life and to pay a fine of ₹10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months each.

ii. The abovenoted criminal revision has been preferred at the instance of petitioner-herein (complainant-Salinder Singh) for the enhancement of the sentence of the appellants from life imprisonment to Capital Punishment.

2. Both the abovesaid criminal appeal and revision have been taken up together for the purpose of disposal since these are outcome of one and the same judgment and order of sentence in order to avoid repetition and conflict of judgments.

3. The prosecution version in nut-shell as presented before

learned trial Court was that on receipt of a Quick Service Transmission (Q.S.T.) from Police Station Mallanwala regarding the dead body of Yadvinder Singh @ Yadu son of Kulbir Singh resident of village Saada Mauja lying in Civil Hospital, Ferozepur, ASI Bohar Singh, In-charge of Police Post, Chughtewala along with HC Gurcharan Singh and other police officials reached at the abovesaid hospital after obtaining medical ruqa. Complainant-Salinder Singh son of Piara Singh resident of Saada Mauja, Police Station Mallanwala along with Mangal Singh Ex-Sarpanch was found present in the hospital. He made statement Ex.P1 before the police which was to the following effect:-

“That he is an agriculturist by profession. They are four brothers namely, Jasvir Singh, Kulbir Singh, Dalbir Singh and he himself. Yadvinder Singh @ Yadu son of his brother Kulbir Singh aged about seven years has been studying in UKG class at Shahid Bhagat Singh Memorial Public School, Wahka Maur. The other children of his village are also studying in that school. They are doing their up and down on the peter rehra (Gharuka) i.e. vehicle to be run with a small diesel engine. Yesterday on 07.12.2005 at about 2:00 p.m., his abovesaid nephew Yadvinder Singh @ Yadu had been coming to his house from his school on peter rehra after appearing in his paper. The driver of the peter rehra went ahead after dropping the children in front of their house on the road. He and Mangal Singh, Ex-Sarpanch

reached near the road to bring the children. Gurmej Singh and Baldev Singh sons of Inder Singh of his village were already standing therein. Within their view, accused-Major Singh came there while riding Freedom motorcycle make L.M.L. without number and without blowing any horn at fast speed negligently. Abovesaid Gurmej Singh and Baldev Singh uttered 'that today is there a chance, let a lesson be taught to Kulbir Singh for fighting with them'. Then within their sight, accused-Major Singh straightway hit his motorcycle to his nephew Yadvinder Singh @ Yadu. Due to the impact of hitting with motorcycle, his nephew Yadvinder Singh @ Yadu fell down on the road and resultantly, he received dragging abrasion below his left eye, cheek and left knee. Thereafter, accused Major Singh along with his co-accused Gurmej Singh and Baldev Singh went towards the village on that motorcycle. This entire incident was witnessed by him and Mangal Singh, Ex-Sarpanch. Cause of this occurrence was that a quarrel took place between Baldev Singh and Kulbir Singh during Panchayat elections regarding votes in which Baldev Singh had received injuries and due to that grudge all the abovesaid accused injured his nephew Yadvinder Singh @ Yadu in connivance with each-other by hitting him with the motorcycle straightway. He and Mangal Singh brought injured Yadvinder Singh @ Yadu

to Mission Hospital, Ferozepur for his treatment, wherein Doctor referred him to Ludhiana due to his serious condition. While they were on the way to Ludhiana and reached near Mallanpur, his nephew died. They came to Civil Hospital, Ferozepur and got deposited the dead body of deceased in its trauma ward. Request was made to take action against the culprits”.

After recording the above statement of complainant, he signed the same in English after admitting it to be correct upon which ASI Bohar Singh made his endorsement Ex.P16 and sent ruqa to Police Station on the basis of which FIR Ex.P22 in the instant case was registered.

Inquest report in respect of dead body of deceased was prepared. Post-mortem on the dead body of deceased was also got conducted.

Thereafter, further investigation of this case was conducted by Kuljinder Singh, SI/SHO, Police Station Mallanwala. Site plan of the place of occurrence was prepared after its inspection. Statements of witnesses were recorded. Offence under Section 302, IPC, was reduced to offence under Section 304, IPC. During investigation, accused-Baldev Singh and Gurmej Singh were found innocent. Accused Major Singh was apprehended in this case on 07.02.2006. Motorcycle bearing registration No.PB05-K-8426 make L.M.L. Freedom along with its registration certificate and driving license of accused Major Singh was taken into

police possession. This motorcycle was got examined mechanically and the report of the mechanic in this regard was also obtained. The complainant-party moved an application before Additional Director General Internal Vigilance-cum-Human Rights Commission, Punjab, Chandigarh for prosecuting the accused in this case for offence under Section 302, IPC, which was inquired into by Sh.Bhupinder Singh, DSP. After discussing the matter with SSP, it was directed to file the challan in this case under Section 304-A, IPC. On the completion of investigation, challan was presented in this case against the accused Major Singh only in the Court of learned Illaqa Magistrate, Ferozepur for the offence under Section 304-A, IPC.

4. Initially, charge was framed in this case, as per record, against accused Major Singh for the offences punishable under Sections 279 and 304-A, IPC, by learned Illaqa Magistrate vide order dated 03.08.2006. Then after recording statement of complainant-Salinder Singh (PW-1) partly in the Court of learned Illaqua Magistrate, the prosecution filed an application under Section 319 of the Code of Criminal Procedure ("Cr.P.C."- for short) for summoning of Gurmej Singh and Baldev Singh as additional accused to face trial in this case which was accepted by learned Illaqa Magistrate vide order dated 29.08.2007 and their presence was procured.

5. Then after hearing learned State Counsel and counsel for the accused, the learned Illaqa Magistrate came to the conclusion that present case falls within the purview of provision of Section 302 read with Section 34, IPC and committed this case for trial to the Court of learned

Sessions Judge, Ferozepur vide order dated 21.04.2008.

6. Finding a prima facie case punishable under Section 302 read with Section 34, IPC, against the accused, they were chargesheeted accordingly to which they pleaded not guilty and claimed trial.

7. During trial of the case, prosecution examined ten witnesses in all to substantiate its allegations and to prove the guilt of the accused and closed its evidence.

8. Then as per the provision of Section 313 of Cr.P.C., accused were duly examined. The entire culpable evidence as brought on the file against them by the prosecution during trial of the case was put to them which was entirely denied by them. Further they pleaded their innocence and false implication in this case.

Accused Major Singh also took the plea that he was going from Sainda Mauja to village Wahka Maur on his motorcycle, whereas Raju Bhayia was sitting with him on the pillion seat. So many school children were coming on Gharuka driven by Jaswant Singh. When he reached near Gharuka, then Yadvinder Singh @ Yadu suddenly jumped from the Gharuka for going to his house. He applied brakes, but accidentally, hit Yadvinder Singh @ Yadu. Besides the school children and Jaswant Singh the driver of Gharuka, nobody else was present there. A false case was registered against him and others since FIR No.11 dated 25.06.2003 under Section 323, 324, 148 read with Section 149, IPC, Police Station City Ferozepur was registered against Mangal Singh son of Hardip Singh; Khan Singh, Hira Singh sons of Mangal Singh; Jasbir

Singh, Kulwinder Singh sons of Piara Singh and Mehtab Singh son of Partap Singh for causing injuries to Baldev Singh.

Accused Gurmej Singh and Baldev Singh also took the plea that they had been involved in this case being the brothers of Major Singh and also due to previous injury.

In their defence, they examined three witnesses.

9. The learned trial Court after hearing learned counsel for both the parties and going through the record as well held accused Major Singh guilty for the offence punishable under Section 302, IPC, whereas his co-accused Gurmej Singh and Baldev Singh were held guilty for the offence punishable under Section 302 read with Section 34, IPC and sentenced them by awarding punishment as narrated in para No.1 of this judgment.

10. Appellants-herein (accused) being felt aggrieved against the judgment of conviction dated 19.04.2010 and order of sentence dated 22.04.2010 have come up with the instant appeal.

Complainant-Salinder Singh also being dis-satisfied with the quantum of sentence has come up with the instant revision petition for enhancement of the sentence of respondents No.2 to 4 herein (convicts) to capital punishment from the life imprisonment.

11. Notice of this appeal as well as revision petition was given to concerned respondents. Record of learned trial Court was also requisitioned.

12. Counsel for both the parties were heard and record was also

looked into with their kind assistance.

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13. The learned counsel for the appellants has contended that nature of mishap in the case in hand as an accident stood clearly established from the very incipient stage of this case. In this connection, he has also contended that informant/complainant-Salinder Singh (PW-1) made a categorical statement before the police that he first saw the motorcyclist and the vehicle was being driven by Major Singh in a rash and listless manner. Then he has also contended that in the case in hand only '*Lalkara*' was attributed to appellants No.2 and 3 namely Gurmej Singh and Baldev Singh. In order to make his this contention clear, he has submitted that prosecution version qua this '*Lalkara*' attributed to appellants No.2 and 3 is quite a made up story being sheer concoction since such like '*Lalkara*' cannot be audible to the person driving due to the noise emitting from vehicle like motorcycle when being driven at a high speed. Then nothing had come on record that appellant No.1-herein (accused-Major Singh) had acted in response to the alleged '*Lalkara*' attributed to appellants No.2 and 3-herein (accused-Gurmej Singh and Baldev Singh). Then further he has contended that it was an admitted case of prosecution that parties were having enmity with each other on account of some previous incident occurred at the time of Panchayat elections for which FIR No.11 dated 25.06.2003 under Sections 323, 324, 148 read with Section 149, IPC, at Police Station, City Ferozepur was registered against Mangal Singh (PW-2 in the case in hand) and others as recorded in para No.8 of

this judgment.

Then the learned counsel for the appellants has also submitted that as per the record prepared by Dr. Parminder Singh, patient Yadvinder Singh @ Yadu had fallen from the Autorickshaw. Then it is further his submission that learned trial Court discarded statements of DW-1 Kamaljit Kaur and DW-3 Amanprit Kaur simply for the reason of their being minor. This approach of learned trial Court is wholly unwarranted and illegal patently.

Then he has also referred to the skid marks which were detected at the spot of alleged occurrence/accident in order to show that appellant No.1-Major Singh applied the brakes of his motorcycle to save Yadvinder Singh @ Yadu (since deceased). The judgment under appeal is stated to be the result of misreading and non-consideration of material part of the evidence available on file.

Then he has also contended that the complainant-party with a mala fide intention as well as revengeful attitude exploited the accused road accident due to the previous enmity. Judgment under appeal also suffers from serious infirmities and hence not sustainable in the eyes of law. Further he has prayed for the acceptance of the appeal and to set aside the impugned judgment of conviction and order of sentence and to exculpate appellants-herein (the accused) of the charges framed against them.

14. But on the other hand, learned State counsel has strongly denied the above entire contentions of learned counsel for the appellants and

contended that the impugned judgment and order of sentence are quite consistent with the evidence on the record. No ground is made out to make any kind of interference in the impugned judgment and prayed for dismissal of this appeal.

15. Now let us see the evidence as came on record during trial of the case for the appreciation of the above rival contentions of both the parties.

Complainant-Salinder Singh (PW-1) narrated the prosecution version while appearing before the Court as per his statement Ex.P1 made by him before the police on 08.12.2005 vide which he gave information to the police qua the alleged occurrence. Further he also identified the dead body of the deceased at the time of preparing the inquest proceedings and proved his statement Ex.P3 which was recorded in this regard at that time. Then in his cross-examination, he admitted that he got recorded in his statement to the police that accused-Major Singh (appellant No.1-herein) drove his motorcycle negligently with high speed, without any horn and struck the same against Yadvinder Singh @ Yadu (since deceased). Then it was also found mentioned in his cross-examination that the alleged accident took place in the centre of the road. He showed the skid marks of the tyres to the police at the place of occurrence. Then further it was also found recorded in his cross-examination that he had given history in the Mission Hospital about the injuries of the child volunteered he had told the Medical Officer that motorcycle had struck the child. Then it is also admitted by him that investigation of this case

was done by SI Kuljinder Singh, Police Station Mallanwala; S. Harjinder Singh SP(D), Ferozepur and S. Bhupinder Singh, DSP Internal Vigilance Cell Chandigarh and after all these inquires/investigation, the challan was presented under Section 304-A, IPC.

Then PW-2, Mangal Singh, eye-witness, in order to muster strength to prosecution version lended corroboration to the statement of complainant-Salinder Singh (PW-1). Further, he also identified dead body of deceased at the time of the inquest proceedings and proved his statement Ex.P5 recorded in this regard. Then in his cross-examination, he also admitted that he got recorded in his statement before the police that Major Singh came in a rash and negligent manner while driving motorcycle and struck against Yadvinder Singh @ Yadu. Even this fact was also found mentioned in his examination-in-chief. Further, he had also shown the place of occurrence to the police and the police had seen skid marks of motorcycle.

PW-3 Dr. Gurmej Ram conducted postmortem examination on the dead body of Yadvinder Singh @ Yadu (since deceased) and proved the carbon copy of his post-mortem report Ex.P7 and the pictorial diagram showing the seats of the injuries Ex.P9. Then in his cross-examination, he also stated that possibility of all the injuries being suffered in an accident is there.

PW-7 SI Kuljinder Singh partly conducted the investigation of this case. He proved the rough site plan of the place of occurrence as Ex.P13. Then in his cross-examination also it came on record that he

inquired from 27/28 people about the occurrence and after the investigation, he came to the conclusion that it was a case of accident and due to party faction a murder case was being planted against the accused. Then it was also found recorded in his cross-examination that S.P. (Head Quarter) during his investigation came to the conclusion that deceased-Yadvinder Singh @ Yadu quickly jumped out of the Gharuka and struck with the motorcycle being driven by accused-Major Singh and the occurrence took place accidentally.

PW-9 SI Bohar Singh, Investigating Officer of this case proved statement Ex.P1 of the complainant-Salinder Singh, endorsement Ex.P16 made on ruqa and FIR Ex.P22. Then he also proved the inquest report Ex.P23 prepared in respect of dead body of deceased. Then he also proved the memo Ex.P17 vide which motorcycle bearing registration No.PB05K-8426, make L.M.L. Freedom involved in the alleged incident was taken into police custody and memo Ex.P19 vide which driving license of accused-Major Singh and registration certificate of abovesaid motorcycle were taken into police possession. Then he also deposed about the formalities done by him during investigation of this case. In his cross-examination, it came on record that application Ex.D1 was written by him for conducting post-mortem on the dead body of Yadvinder Singh @ Yadu wherein it was mentioned that deceased Yadvinder Singh @ Yadu had died due to striking of motorcycle in the accident.

PW-5 HC Amarjit Singh was posted as Mechanic at Police Line Ferozepur on 13.03.2006 and he mechanically examined the

motorcycle bearing registration No.PB05-K-8426 involved in this case and submitted his report Ex.P11. In this report he recorded as under:-

- “i. Handle is correct/right*
- ii. Brake is correct.*
- iii. The light glass is broken*
- iv. Towards right side leg guard is having dent/oblique.*
- v. Motor Cycle is in running condition and road test taken”.*

16. Then in the defence, DSP Bhupinder Singh was examined as DW-4. He also conducted investigation of this case and after holding an inquiry, he came to the conclusion that offence under Section 302, IPC, was not made out, rather an offence under Section 304-A, IPC, was disclosed against the accused. His report in this regard was Ex.D3.

17. In the light of above discussed entire evidence of both the parties, the net conclusion is that the alleged incident was accidental and not with an intention to cause death of deceased-Yadvinder Singh @ Yadu. So, as such, the above contention of learned counsel for the appellants that alleged occurrence was a case of accident which took place suddenly is held to be correct.

18. So far as the previous enmity is concerned, the same was admitted by complainant-Salinder Singh (PW-1) in his statement Ex.P1, wherein he stated that a quarrel took place between Baldev Singh and Kulbir Singh during Panchayat election in which Baldev Singh had received injuries. Then, complainant-Salinder Singh (PW-1) in his cross-

examination also admitted that FIR was got lodged by Baldev Singh against him, his brother Kulbir Singh, Mangal Singh and others. Then PW-2 Mangal Singh also admitted in his cross-examination that Baldev Singh got registered a case against him and five others under Sections 323/324, IPC, on 25.06.2003. Then he also admitted that in that case his two sons Kehar Singh and Hira Singh, two brothers of complainant namely Jasbir Singh and Kulbir Singh and one of his relation Mehtab Singh were the accused. Then as abovesaid PW-7 SI Kuljinder Singh after the inquiry also came to the conclusion that it was a case of accident and due to party faction, a murder case was foisted on the accused.

19. Then copy of one judgment Ex.D4 dated 06.03.2009 passed by the Court of learned Chief Judicial Magistrate, Ferozepur in criminal case bearing FIR No.119 dated 25.06.2003, Police Station City Ferozepur was placed on record. It also displayed that in this criminal case Baldev Singh was the complainant, whereas Mangal Singh, Kulbir Singh, Jasvir Singh and others were the accused. They were held guilty in this case and convicted for the offences under Sections 148, 323, 324 read with Section 149, IPC. So the factum of previous enmity between the parties also stands duly established on the record.

20. Then in this case the alleged occurrence took place on 07.12.2005 at 2:00 p.m. in the area of village Saada Mauja. In this regard, complainant-Salinder Singh (PW-1) made his statement Ex.P1 before the police on the next date i.e. on 08.12.2005 at 6:00 a.m.. The distance of the place of occurrence from the Police Station as recorded in

FIR Ex.P22 was seven miles. So there was delay of about sixteen hours in lodging the FIR. Then as per this FIR, Special Report was received in this case by the Illaqa Magistrate on 08.12.2005 at 10:00 p.m.. So there was another delay of sixteen hours in sending the Special Report to the Illaqa Magistrate from the time of lodging the FIR. There was no explanation on the part of prosecution qua the abovesaid delay. So this fact also goes against the interest of prosecution in order to hold that same might have been used by the complainant-party to implicate appellants No.2 and 3-herein (accused Gurmej Singh and Baldev Singh) in this case falsely and further to involve appellant No.1-herein (accused Major Singh) in the murder case which in fact was a case of mere accident.

21. Then it was the version of prosecution that appellant No.1-herein (accused-Major Singh) came at the spot on his motorcycle at a very high speed negligently without blowing any horn, whereas appellants No.2 and 3-herein (accused Gurmej Singh and Baldev Singh) instigated him by saying that today is a chance to teach a lesson to Kulbir Singh for having a brawl with them. But it is fact that when a two wheeler like motorcycle is being driven at a high speed, then it makes a loud noise which makes inaudible to the driver of the two wheeler whatever is stated to him by the people standing nearby. So the plea of prosecution that appellant No.1-herein (accused-Major Singh) hit his motorcycle against Yadvinder Singh @ Yadu (since deceased) on the exhortation of appellant No.2 & 3-herein (accused Gurmej Singh and Baldev Singh) also does not seem to be plausible.

22. Then as per the version of prosecution, appellant No.1-herein (accused-Major Singh) hit his motorcycle against deceased-Yadvinder Singh @ Yadu only once. It was not the case of prosecution that he had struck his motorcycle against deceased several times. Had he struck his motorcycle against deceased again and again then it could have made out a case that he had hit him with an intention to kill him.

23. Then in the defence version, appellants (accused) had examined DW-1 Kamaljit Kaur and DW-3 Amanprit Kaur. Both of them stated before the Court that at the time of alleged incident, they were also travelling in the pater rehra of Jaswant Singh. When it reached parallel to the residence of Yadvinder Singh @ Yadu, he (Yadvinder Singh @ Yadu) jumped from the running pater rehra in a haste to go to his house. There came per chance a motorcycle being driven by accused-Major Singh which struck against Yadvinder Singh @ Yadu who received injuries. The reason given by the learned trial Court for discarding the testimonies of these two defence witnesses being minor is held to be not a valid ground.

24. In the light of above discussion, the conviction and sentence of appellants No.2 and 3 herein namely Gurmej Singh and Baldev Singh (the accused) are set aside and they are acquitted of the charges against them. Conviction of appellant No.1-Major Singh herein (the accused) under Section 302, IPC, alongwith his sentence of life imprisonment and fine of ₹20,000/- is also set aside. Instead, he is convicted under Section 304-A, IPC and sentenced to undergo rigorous imprisonment for two

years and to pay a fine of ₹50,000/- and in default of payment of fine, he shall further undergo rigorous imprisonment for one year. The fine of ₹50,000/-, if deposited by appellant No.1-Major Singh be disbursed to Manjit Kaur, mother of the deceased, as compensation.

25. In the light of above this appeal is partly accepted and partly rejected to the extent indicated above.

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No material on the record was found in order to award death penalty to respondents No.2 to 4-herein, by modifying their alleged sentences of life imprisonment. The learned counsel for the revision petitioner has failed to point out any material on the record on the basis of which prayer made in this revision can be accepted.

Therefore, revision stands dismissed and disposed of accordingly.

July 22, 2016
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(GURMIT RAM)
JUDGE

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| 1. | Whether reportable? | No / Yes |
| 2. | Whether reasoned / speaking? | No / Yes |