

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

CRA-D No. 487-DB of 2010 (O&M)

Date of decision: 06.01.2016.

Satnam Singh @ Sata

.....Appellant.

Versus

State of Punjab

.....Respondent.

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

Present: Mr. Vinod Ghai, Senior Advocate, with
Mr. Simrandeep S. Sandhu, Advocate, for the appellant

Mr. Arshvinder Singh, Additional Advocate General, Punjab,
for the respondent.

S.S. SARON, J.

This appeal has been filed by Satnam Singh @ Sata against the judgment of conviction and order of sentence dated 27.04.2010 passed by the learned Additional Sessions Judge, Amritsar whereby the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code ('IPC' – for short) for committing the murder of Baljit Singh and he has been sentenced to undergo life imprisonment; besides, pay a fine of Rs.5,000/- (Rupee five thousand) and in default thereof, undergo further rigorous imprisonment for six months.

FIR (Ex. PA/2) was registered on the statement of Khushpal Singh (PW1), brother of the deceased Baljit Singh. According to the complainant, he was resident of Mohalla Hari Pura, Police Station Islamabad, District Amritsar and was running a private milk dairy. He had five brothers and one sister, who were all married. Before the milk dairy

was shifted out of the town, he was doing the business of sale of fodder at Niyawala 'Mor'. Satnam @ Sata-appellant was purchasing fodder from them for which he had to make payment to the complainant-Khushpal Singh. On the fateful day of incident, i.e. on 09.05.2005 at about 10:30 p.m., Baljit Singh (deceased in the case), brother of the complainant, was going towards Niyawala 'Mor' for demanding the money from Satnam @ Sata-appellant. In the meantime, near Niyawala 'Mor', Satnam @ Sata-appellant along with two-three boys met his brother. At that time, Satnam @ Sata-appellant was holding a 'kirpan' in his hand and was raising a noise. The complainant (Khushpal Singh PW1) and his brother Surinderjit Singh (PW2) were also going towards Niyawala 'Mor' and were taking a walk. In the meantime, Rajinder Kumar (who has not been examined) also accompanied them. On hearing a hue and cry and on seeing Satnam @ Sata-appellant and his associates shouting, they went towards them. On their side, i.e. the side of the accused, a boy was standing near Satnam @ Sata-appellant. The said boy worked at the shop of Dilbag Sounds Service. He raised a 'lalkara' to catch hold and teach a lesson to Baljit Singh (deceased) for demanding the money. In the meantime, Satnam @ Sata-appellant, who was holding a 'kirpan' in his right hand, inflicted a 'kirpan' blow on Baljit Singh, brother of the complainant. Baljit Singh fell down on the ground and blood started oozing from the injury that was inflicted. The complainant, his brother-Surinderjit Singh and also Rajinder Kumar raised an alarm. On hearing which the accused fled from the spot. They arranged a vehicle and got Baljit Singh admitted at Guru Nanak Dev Hospital, Amritsar where he remained under treatment. Till the time of lodging of the

report, no opinion of the doctor was given. On meeting Pritpal Singh ASI, In-charge, Police Post Gurbax Nagar, Amritsar, the complainant had got his statement recorded which was heard and accepted as correct.

ASI Pritpal Singh, In-charge, Police Post Gurbax Nagar, Amritsar (PW4) recorded police proceedings to the effect that on 10.05.2015, he along with other police officials were present at T-point Bakar Mandi in connection with patrolling and checking. An information was received there that Baljit Singh son of Pritam Singh, resident of Chhota Haripura, Niyawala 'Mor' was admitted in an injured condition at Guru Nanak Dev Hospital, Amritsar. ASI Pritpal Singh along with his other companions reached the hospital and obtained a written opinion from the doctor. The doctor opined that the injured was unfit to make a statement. Khushpal Singh (PW1), who was an eyewitness and present in the hospital, approached ASI Pritpal Singh and got his statement recorded which was read over to him and he signed the same in Punjabi after admitting it to be correct, which was attested by ASI Pritpal Singh. From the statement of the complainant, an offence under Section 324/34 IPC was made out. The statement was sent to the police station through Constable Rajinder Kumar for registration of a case. The case number was asked to be informed after registration of the case. After receipt of doctor's opinion, action would be taken as to whether the offence was to be enhanced. The control-room was asked to be informed through wireless. ASI Pritpal Singh along with his other companions were busy in the investigation. The writing was received at the police station and the FIR was registered on the basis of the same.

ASI Pritpal Singh (PW4) conducted the investigation in the

case. He (PW4) then went to Guru Nanak Dev Hospital on 11.05.2005 and submitted an application to the concerned doctor to get his opinion regarding the condition of the injured Baljit Singh. The patient was again declared unfit to make a statement. Then he (PW4) again went to the hospital on 13.05.2005. The injured was again declared unfit to make a statement by the doctors. In the meantime, the injured Baljit Singh was got admitted in Madan Hospital, Amritsar. ASI Pritpal Singh then went to Madan Hospital, Amritsar on 14.05.2005 and sought opinion of the doctor. The doctor opined that the injured had suffered serious brain injury which could result in his death. The applications moved by him seeking opinion of the doctors of Guru Nanak Dev Hospital and Madan Hospital were tendered in evidence. After receipt of opinion of the doctor, ASI Pritpal Singh went to police station where SHO recorded a DDR adding the offence under Section 307 IPC. The same was added on the basis of the opinion given by the doctor. Then the houses of the accused persons were raided, but they could not be traced. The police party had set up a check-post at T-point of Nawan Kot where secret information was received that the accused Satnam @ Sata (appellant), Surinder Singh @ Sonu (since acquitted) were present at Chabal road T-point. The police party went to the said place and arrested Satnam Singh @ Sata and Surinder Singh vide arrest memos Ex. PJ and Ex. PK respectively. Rough site plan Ex. PL of the place of arrest was prepared. Personal search memos Ex. PM and Ex. PN were prepared. Intimation was also sent to the relatives of the accused of their arrest.

During investigation, Satnam Singh @ Sata-appellant made a

disclosure statement on 15.05.2005 regarding concealing a 'kirpan' with which he had committed the offence. The 'kirpan' had been concealed at Chabal road near T-point adjoining a bridge on the drain. The 'kirpan' was under the grass, which he could get recovered by leading the police party to the said place. Disclosure statement Ex. PP was recorded which was signed by Satnam Singh @ Sata-appellant and attested by HC Gurwinder Singh and Constable Baljit Rai. Satnam Singh @ Sata-appellant led the police party to the disclosed place and got recovered a 'kirpan' from beneath the grass. The said 'kirpan' was taken in possession vide memo Ex. PQ. Site plan Ex. PR of the place of recovery of 'kirpan' was prepared. A sketch Ex. PS of the 'kirpan' was also prepared. The statements of the witnesses were recorded.

After completing the investigation of the case, police report (challan) was filed in the Court of learned Judicial Magistrate 1st Class, Amritsar on 12.08.2005. The learned Magistrate, in view of the offence under Section 307 IPC being alleged, vide order dated 17.01.2006, committed the case to the Court of Session, Amritsar for trial. The learned Additional Sessions Judge, Amritsar, to whom the case was assigned, vide order dated 17.03.2006, found that a prima facie case for offence punishable under Section 307/34 IPC was made out against the accused, i.e. Satnam Singh @ Sata (appellant) as also Surinder Singh @ Sonu, Rahul and Narinder Kumar. They were charge-sheeted accordingly.

During trial of the case, the injured Baljit Singh died on 27.08.2007, i.e. after about two years and three months of the occurrence. Accordingly, a supplementary police report was filed alleging commission

of offence under Section 302/34 IPC. The accused were accordingly charge-sheeted for the offence under Section 302/34 IPC. The prosecution, in order to establish its case, examined as many as nine witnesses; besides, tendered documents in evidence. The statement of Satnam Singh @ Sata-appellant was recorded in terms of Section 313 of the Code of Criminal Procedure ('Cr.P.C.' - for short) and the evidence appearing against him was put to him. In his defence, he stated that he was innocent and had been falsely implicated in the case. No alleged occurrence ever took place. In defence, HC Harpal Singh (DW1) was examined. He brought register containing FIR No. 163 dated 06.11.2004 registered at police station Islamaband for the offence under Section 324/34 IPC. The said FIR was registered on the statement of Krishan Kumar son of Ram Lubhaya. The said FIR was exhibited as Ex. DW1/A. He also brought register containing FIR No. 166 of 1999 registered at police station Islamabad for offence under Sections 323/324/34 IPC. The said FIR was registered on the statement of Surjit Kumar son of Piara Lal. Copy of the said FIR was exhibited as Ex. DW1/B. He was not cross-examined by the Public Prosecutor for the State.

The learned Additional Sessions Judge considered the evidence and the material on record and held the appellant-Satnam Singh @ Sata guilty for the offence under Section 302 IPC for committing the murder of Baljit Singh. The other accused, namely, Surinder Singh @ Sonu, Rahul and Narinder Kumar were acquitted of the charges. Satnam Singh @ Sata-appellant has been sentenced to life imprisonment; besides, pay a fine of Rs.5,000/- and in default thereof, undergo further rigorous imprisonment for

six months. The said order of conviction and sentence is assailed in this appeal.

Mr. Vinod Ghai, learned senior counsel, appearing with Mr. Simrandeep S. Sandhu for the appellant has contended that, in fact, the presence of the eyewitnesses, namely, Khushpal Singh (PW1) and Surinderjit Singh (PW2) is highly doubtful and is not established. It is submitted that both of them are the brothers of Baljit Singh (deceased) and they have deposed in favour of the prosecution. Their evidence, it is submitted, is liable to be ruled out of consideration and in case it is excluded there is nothing to establish the prosecution case. In any case, it is submitted that from the facts and circumstances of the case the offence under Section 304 Part-II IPC at the most can be said to be made out as Baljit Singh after the incident that had occurred on 09.05.2005 had died on 27.08.2007, i.e. after two years and three months, and after he was discharged from the hospital. Even otherwise, it is stated that the case would be covered by Exception 4 to Section 300 IPC inasmuch as it was a chance meeting and the incident had occurred in a sudden fight without the offender taking any undue advantage or acting in a cruel manner.

In response, Mr. Arshvinder Singh, Additional Advocate General, Punjab, learned State counsel has submitted that the case against the appellant is clearly made out. The learned trial Court has recorded a firm finding against the appellant after considering all the evidence and material on record. The same is not liable to be interfered with and the judgment and order of the learned trial Court are liable to be sustained and upheld.

We have given our thoughtful consideration to the contentions

of learned counsel for the parties and with their assistance gone through the records of the case.

The statement of Khushpal Singh-complainant (PW1) and his brother Surinderjit Singh (PW2) support the prosecution case. Learned senior counsel appearing for the appellant has, however, submitted that they were, in fact, not present at the place of occurrence as Satnam Singh @ Sata-appellant had met Baljit Singh per chance; besides, the said witnesses also came there per chance and it is proverbially rash to rely on the testimony of chance witnesses. It is also submitted that there is no previous enmity between the parties. However, we are of the view that the facts and circumstances and the manner in which 'kirpan' blow was inflicted, which is corroborated by the medical evidence on record indeed go to show that Satnam Singh @ Sata-appellant had inflicted a 'kirpan' blow on the head of Baljit Singh. Therefore, the contention of learned senior counsel that it was a chance meeting would not be of much significance as the incident occurred in the village where the people do meet one another even per chance. Even the case of the prosecution is that Baljit Singh had gone towards Satnam Singh @ Sata-appellant to collect money which was due to his brother Khushpal Singh-complainant (PW1).

The contention of learned senior counsel for the appellant that it is a case of 304 Part-II IPC may be considered. It is to be noticed that the prosecution case is that Baljit Singh (deceased) had gone towards Satnam Singh @ Sata-appellant to collect the money that was due to his brother Khushpal Singh. Admittedly, there is no previous enmity between the two sides. Satnam Singh @ Sata-appellant was stated to be carrying a 'kirpan' at

that time. As to what transpired at that moment has not been brought on record by the prosecution. However, from the nature of the injury that has been inflicted on the head of Baljit Singh, which is a single blow, it can be inferred that Satnam @ Sata-appellant had the knowledge that the injury on the head would result in the death of Baljit Singh although he did not intend to cause his death. This is for the reason that there was no prior planning and it was Baljit Singh, who had come to him. The case of Satnam Singh @ Sata-appellant would fall within Exception 4 to Section 300 IPC, which reads as follows:

“Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation. - It is immaterial in such cases which party offers the provocation or commits the first assault.”

In order to apply and invoke Exception 4 to Section 300 IPC, four requirements are to be fulfilled, i.e. (i) that the incident occurred in a sudden fight; (ii) there was no premeditation; (iii) the act which resulted in the incident was done in the heat of passion; and (iv) the offender had not taken any undue advantage or acting in a cruel manner. The important aspect is that the incident must have been sudden and not premeditated. Besides, the offender must not have taken any undue advantage or acted in a cruel manner. The Explanation to Exception 4 envisages that it is immaterial in such cases which party offers the provocation or commits the

first assault. Therefore, it is not necessary to go into the question as to who offered the provocation or committed the first assault. The manner in which the incident had occurred was of a sudden fight and unpremeditated; besides, so far as collection of money is concerned, no material except for mere statements have been brought on record. There is nothing to show that there was enmity between the two sides. In fact, according to the prosecution case, there was business dealings between them. In such a situation, it cannot be said that the appellant had the intention to cause death of Baljit Singh. Therefore, we are of the view that the case would be one that would fall within Exception 4 to Section 300 IPC. This is more so, for the reason that Baljit Singh had died almost after two years and three months of the incident that had occurred and after he had been discharged from the hospital. Dr. Ashok Chanana, Associate Professor, Department of Forensic Medicine and Toxicology, Government Medical College, Amritsar (PW7) has opined that the cause of death in the case was compression of brain as a result of subdural hygroma caused by old healed wound described in injury No. 1, which was sufficient in the ordinary course of nature to cause death. Injury No. 1 has been mentioned as follows:

- “1. A cystic swelling 20 x 15 cm was present on the right parieto temporal region of head. It was projecting prominently on this area. On the centre of this swelling a white glistening and tough scar 20 x 1 cm was present extending from the back of right ear and extending up to centre of left parietal region in a curved manner. Around the scar mark, suture marks were present. On dissection a portion of right temporo parietal bone

was not present and the vault of skull was having a defect at this region from which back like cystic swelling was projecting out. On cutting it, a yellowish tinged transparent fluid measuring 500 cc came it (sic. - out). The covering membrane of the swelling was tough and this cystic swelling was occupying the major portion of the right cerebral hemisphere. The medial surface of left cerebral hemisphere was having depressed area on account of compression caused by cystic swelling. Herniation of the hippocampus gyrii of both side was present through the tentorial hiatus. The weight of the brain was 750 gms.”

The learned trial Court has held the case to be one of murder. However, in the facts and circumstances, we are of the view that the present is a case of culpable homicide not amounting to murder. The cause of death has been mentioned to be subdural hygroma, which is an accumulation of cerebrospinal fluid (CSF) in the subdural space after head injury. It appears to be relatively common, but its onset time and natural history are not well defined. The injury being old and Baljit Singh survived for almost two years and three months after the incident and also from the fact that he had been discharged from the hospital, it is quite evident that there was no intention on the part of the appellant to commit the murder of Baljit Singh although he had the knowledge that death would be caused by inflicting a 'kirpan' blow on his head.

Learned counsel for the State has filed affidavit of Mr. Ravinder Kumar Sharma, PPS, Superintendent, Central Jail, Amritsar

mentioning the period of imprisonment undergone by Satnam Singh @ Sata-appellant. In terms of the said affidavit, the appellant has undergone actual imprisonment of four years, eleven months and twenty-three days as on 05.01.2016. He has earned remission of five years, ten months and eight days. His total imprisonment including remissions is ten years, ten months and one day as on 05.01.2016. There is no other case against the appellant.

Therefore, in the facts and circumstances, it would be just and expedient to modify the conviction of the appellant from Section 302 IPC to Section 304 Part-II IPC; besides; modifying the sentence of imprisonment for life to the period of imprisonment already undergone by him. The appellant had caused the death of Baljit Singh according to the complainant-Khushpal Singh (PW1). All his brothers were married; besides, Baljit Singh (deceased) was 33 years of age at the time of his death according to the post mortem report. Therefore, in the facts and circumstances, it would be just and expedient that compensation of Rs.5,00,000/- (Rupees five lac) is paid by the appellant to the legal heirs of deceased Baljit Singh.

Accordingly, the appeal is partly allowed and the conviction of the appellant for the offence under Section 302 IPC and sentence of imprisonment for life and also the sentence of fine is set aside. However, the appellant-Satnam Singh @ Sata is convicted for the offence under Section 304 Part-II IPC and sentenced to the period of imprisonment already undergone by him; besides, he shall pay compensation of Rs.5,00,000/- (Rupees five lac) to the legal heirs of deceased Baljit Singh which he shall pay within two months from the date of receipt of copy of

the order. The said amount shall be deposited in the Court of the learned Chief Judicial Magistrate, Amritsar, who shall disburse the same to the legal heirs of the deceased Baljit Singh after due verification. The appellant, if not wanted in any other case, be set at liberty forthwith.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

06.01.2016
Ramesh

Whether to be referred to reporter: Yes