

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

CRA-D-816-DB-2012
Date of decision:09.11.2016

Gurmit Singh and another

.....Appellants

Versus

State of Punjab

.....Respondent

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

Present: Mr. H.S. Bhullar, Advocate
for the appellants.

Dr. Deipa Singh, Addl. A.G., Punjab.

GURMIT RAM, J.

This appeal is preferred by aforementioned appellants-Gurmit Singh and Mukhtiar Singh @ Bunty against the judgment and order of sentence dated 09.07.2012 and 11.07.2012 respectively passed by the Court of learned Sessions Judge, Bathinda in criminal case bearing FIR No.57 dated 16.05.2011, under Section 302 read with Section 34 of the Indian Penal Code ("IPC"-for short), Police Station, Canal Colony, Bathinda vide which they were held guilty for the offence punishable under Section 302, IPC and awarded sentence thereunder.

2. The case of prosecution in nutshell before the learned Trial

Court was that on 16.05.2011, a telephonic message from M.H.C. Police Post Vardhman was received by Sandeep Singh SI/SHO that an information had been received from District Control Room, Bathinda that Bachittar Singh son of Kewal Singh who was admitted in Civil Hospital, Bathinda had succumbed to the injuries. On this, the said SI/SHO alongwith other police officials reached at Civil Hospital, Bathinda where he met complainant-Lakhmir Kaur wife of Bachittar Singh resident of Amarpura Basti, Street No.5/1, Bathinda along with her son Jasvir Singh and one Varinder Singh s/o Karam Singh. She got recorded her statement Ex.PW2/A with regard to the present occurrence, which was as under:-

*“That she is housewife. She was married to abovesaid Bachittar Singh about 25 years back. She has four sons. Her two sons namely Gurtej Singh and Pavittar Singh are residing with her mother-in-law, Parkash Kaur. Her brother-in-law Bant Singh is residing in a separate house. Her other brothers-in-law namely Gurmeet Singh, Mukhtiar Singh @ Bunti and Attar Singh @ Tillu are also residing with her mother-in-law in their common house, but in separate rooms. She alongwith her husband and two sons Jasvir Singh and Gagandeep Singh has been residing in a separate room. Yesterday on 15.05.2011 at about 9:00 p.m., her husband in her presence uttered to her sons Gurtej Singh and Pavittar Singh **'do some work, you remain idle, you cannot make both ends'**. On his so saying, her brothers-in-law Gurmit Singh and Mukhtiar Singh @ Bunti started*

brabbling with her husband. Further said Gurmit Singh removed the handle of hand pump, whereas Bunti brought a 'Saria' from inside. Gurmit Singh gave a blow with the handle of hand pump on the back side of head of her husband whereas Bunti gave a 'Saria' blow on his left leg. Then her husband fell down with his face downwards. In the meantime, her son Jasvir Singh also came there from outside. Then said Gurmit Singh again caused a blow with the handle of hand pump on the left flank on the back of her husband, whereas Bunti also gave him a 'Saria' blow on his left shoulder. At that time there was light in the courtyard. Complainant and her son-Jasvir Singh raised an alarm 'Marta-Marta', upon which abovesaid both the assailants ran away from the spot with their respective weapons. Injured was got admitted in Civil Hospital, Bathinda for treatment where he succumbed to his injuries today in the morning. The motive behind this occurrence was that the husband of the complainant was preventing his sons Gurtej Singh and Pavittar Singh from sitting idle, whereas her brothers-in-law Gurmit Singh and Mukhtiar Singh @ Bunti were misguiding them. Request was made to take action against the culprits."

Complainant thumb marked her above statement after admitting it to be correct. SI/SHO made his endorsement Ex.PW9/A on the statement of the complainant, on the basis of which FIR Ex.PW9/B

with regard to the present occurrence was recorded at Police Station, Canal Colony, Bathinda. Inquest report with regard to dead body of the deceased was prepared. Post mortem on the dead body was got conducted. Site plan of the place of occurrence was prepared after inspecting the same. From the spot, one pillow and a '*Parna*' (piece of cloth) bloodstained were recovered and the same were taken into police possession. Accused were produced before the police on 16.05.2011 and they were arrested in this case. Further during investigation, the accused got recovered the weapon of offence i.e. handle of hand pump and '*Saria*' which were allegedly used in the alleged occurrence and the same were deposited with the MHC of the police station. Statements of witnesses were recorded. Reports of Forensic Science Laboratory ("FSL"-for short) Mohali and of Chemical Examiner to Punjab Government were received. On the completion of investigation, challan against the accused was presented in the Court of learned Illaqa Magistrate, who after making compliance of the provisions of Section 207 of the Code of Criminal Procedure ("Cr.P.C." - for short) committed this case to the Court of learned Sessions Judge, Bathinda for the trial vide order dated 26.08.2011.

3. Finding a prima facie case punishable under Section 302, IPC and Section 302 read with Section 34, IPC, against both the accused, they were charge-sheeted accordingly vide order dated 02.09.2011 by the learned trial Court, to which, they pleaded not guilty and claimed trial.

4. The prosecution during trial of the case examined nine witnesses in total, besides, tendering report Ex.PW6/G of Chemical Examiner, Punjab Government and report Ex.PW9/G of FSL, Punjab,

Mohali to establish its case against the accused.

5. Then during examination of the accused under the provisions of Section 313, Cr.P.C., the entire incriminating evidence as came on record during trial of the case against them was put to them, which they denied entirely. Further, they also pleaded their innocence and false implication in this case. Then further, they took the plea that Bachittar Singh (since deceased) was a soaker. On the date of occurrence, he came from somewhere after receiving injuries due to fall. Complainant-Lakhmir Kaur and her son Jasvir Singh involved them in this false case deliberately to grab their residential property.

In their defence, they also examined three witnesses.

6. The learned trial Court after hearing the learned counsel for both the parties and perusing the record as well held both the accused guilty for the offence punishable under Section 302, IPC and awarded them sentence as narrated below:-

Gurmit Singh and Mukhtiar Singh @ Bunty	302, IPC	Imprisonment for life alongwith fine of ₹10,000/- each.	In default of payment of fine, the convicts shall undergo rigorous imprisonment for a further period of two years each.
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7. Appellants-herein (accused) being not satisfied with the impugned judgment of conviction and order of sentence have come up with the instant appeal, notice of which was given to the respondent-State. Record of learned trial Court was also requisitioned.

8. Learned counsel for both the parties were heard. Record was

also analyzed minutely with their eminent assistance.

9. Learned counsel for the appellants has contended that presence of PW1 – Jasvir Singh at the spot at the time of alleged occurrence is highly suspicious and as such whatever is stated by him with regard to this occurrence is merely a hearsay version which carries no weight in the eyes of law. In support of his contention, he has referred to the cross-examination of PW1 – Jasvir Singh wherein he has stated that he is employed at a cloth shop and his duty hours are from 10:00 A.M. to 9/10:00 p.m. But in the same sequence, he has also deposed that on the date of occurrence i.e. 15.5.2011, he arrived at his house at about 8:30/9:00 p.m. It is further in his cross-examination that before his arrival, the quarrel had already taken place, but in the same breath he also uttered that after his arrival, the accused had inflicted two injuries to his father Bachittar Singh. Even it is also found recorded in his examination-in-chief that on 15.6.2011, again said about 6 months back, he returned to his house at about 9:00 p.m. after seeing his friend. In this regard PW2 – Lakhmir Kaur (complainant) has stated that on 15.5.2011 at about 9:00 p.m., her husband was advising his sons namely Gurtej Singh and Pavittar Singh to do some work and not to sit idle. At that time, her brothers-in-law namely Mukhtiar Singh took one iron *saria*, whereas Gurmit Singh took handle of the water hand-pump. Accused Mukhtiar Singh caused a *saria* blow on the back side of left leg of her husband, whereas accused Gurmit Singh caused a blow with the handle of hand-pump on the back side of head of her husband. Then it is further in her examination-in-chief that at that time her son Jasvir Singh came to the house. Then thereafter both the

accused gave one blow each with their respective weapons to her husband Bachittar Singh when he was lying on the ground with face downwards.

10. So the real picture, which has come to surface from the above discussed deposition of two star witnesses of prosecution, is that PW1 – Jasvir Singh is not the eye-witness to the entire alleged occurrence, but he is eye-witness to the later part of the occurrence which took place in his presence on his arrival at his house. Later part of this occurrence is confined to the fact that on his arrival to his house, accused Gurmit Singh caused a blow on the back side of left shoulder of his father Bachittar Singh with the handle of the hand-pump, whereas accused Mukhtiar Singh gave him *saria* blow on his left shoulder. PW2 – Lakhmir Kaur as above discussed has also unfolded that on arrival of her son – Jasvir Singh (PW1), accused Mukhtiar Singh and Gurmit Singh gave one blow each to her husband – Bachittar Singh with their respective weapons. Moreover, PW1 – Jasvir Singh was doing some private job at a cloth merchant shop on the date of the alleged occurrence, so as such he was not doing any such a hard duty from which he could not be spared or relieved at any point of time during his abovesaid duty hours i.e. 10:00 A.M. to 9/10:00 p.m. From the above discussed evidence of prosecution, it is amply clear that on the the date of alleged occurrence, PW1 had reached at his house i.e. at the spot of occurrence at about 8:30/9:00 p.m. and had witnessed the above mentioned later part of the alleged occurrence. So in the light of this observation, the above contention of learned counsel for the appellants – herein (accused) is declined and disposed of accordingly.

11. Learned counsel for the appellants has further argued that the

alleged occurrence took place at the spur of moment and keeping in view the nature of injuries allegedly caused to deceased by the appellants – herein (accused) and the weapons used, no offence under Section 302 of the IPC in this case has been made out against the appellants – herein (accused) and rather the offence, if any, comes within the purview of Section 304 Part I or 304 Part II of the IPC and hence their conviction is liable to be modified either for the offence under Section 304 Part I or 304 Part II of the IPC instead of Section 302 of the IPC. In order to further explore his above contention, he has also submitted that as per the deposition of PW1 – Jasvir Singh, appellant – herein (accused) Gurmit Singh caused a blow with handle of hand-pump on the back side of left shoulder of his father Bachittar Singh (since deceased) whereas appellant – herein (accused) Mukhtiar Singh gave him a *saria* blow on his left shoulder. On this point, PW2 – Lakhmir Kaur (complainant) as above-said deposed that appellant -herein (accused) Mukhtiar Singh caused a *saria* blow on the backside of left leg of her husband Bachittar Singh and appellant – herein (accused) Gurmit Singh gave a blow on the backside of head of her husband with the handle of hand-pump. As per her deposition, on receipt of these injuries, her husband fell down on the ground with his face downwards and even thereafter, both the said assailants caused one blow each to her husband with their aforementioned respective weapons which as per statement of PW1 – Jasvir Singh hit him on the backside of his left shoulder and on his left shoulder. This act and conduct on the part of appellants – herein (accused) manifests very clearly that they assaulted the deceased again and again. Even they did not spare him when he had

fallen on the ground on receipt of first two injuries at their hands and subsequent thereto they caused one blow each to him as above mentioned with their respective weapons i.e. iron *saria* and handle of hand-pump. Then interestingly the above ocular version as deposed by PW1 and PW2 with regard to the injuries allegedly caused by appellants – herein (accused) to deceased coincides with the medical evidence i.e. medico legal report Ex.PW3/C and post-mortem report Ex.PW6/C of Bachittar Singh (since deceased). The number and nature of injuries mentioned in the medico legal report and post-mortem report are found to be fully consistent with the injuries as stated by PW1 and PW2 allegedly caused by the appellants – herein (accused) to the deceased. So this case does not come within the scope of any of the exceptions annexed with Section 300 of the IPC in order to bring it within the purview of either Section 304 Part I or 304 Part II of the IPC. Hence the above contention of learned counsel for the appellants – herein (accused) is declined and disposed of accordingly.

12. Then learned counsel for the appellants – herein (accused) has further contended that the appellants are liable for their individual acts attributed to them without applying the provisions of Section 34 of the IPC since the evidence on record is lacking to establish the fact that there was any common intention on the part of the appellants – herein (accused) at any point of time, prior to alleged occurrence to cause injuries to the deceased which could lead to his death. In support of his contention, he has also cited the case law as laid down by the Hon'ble Apex Court in

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R.C.R.(Criminal) 375. In this case one accused gave injury on the head of the deceased with blunt weapon and other accused gave stick blow on his body which was not a vital part. It was not proved that both the accused had any common intention to cause injury to deceased. Accused who gave stick blow was held to be rightly acquitted.

13. So far the fact as to whether there was common intention on the part of the accused persons to cause any injury to the victim or not is concerned, there can be no straightjacket formula to determine the same. It all depends upon the facts and circumstances of each and every case to determine as to whether there was any common intention on the part of the accused persons or not in the alleged occurrence. So far the case in hand is concerned, Bachittar Singh (since deceased) had been advising his sons Gurtej Singh and Pavittar Singh to do some work and not to sit idle. In our society, usually the parents make their children understand to do something for earning the livelihood in the light of their better future prospects. At the abovesaid very moment, appellants – herein (accused) interjected into the matter and started speaking loudly. One of them picked up iron *saria* and the other took a handle of water hand-pump simultaneously and assaulted the deceased together, thereby causing him injuries which resulted into his death. When deceased was advising his above-said sons to do work, then the appellants – herein (accused) had no business to poke their nose in the said affair between Bachittar Singh (since deceased) and his sons. This act and conduct on the part of the appellants indicates about the fact that they (accused) were misguiding the children of the deceased in order to make them idle and worthless against

the wishes of their father Bachittar Singh (since deceased). Then it also came in the cross-examination of PW1 - Jasvir Singh that there used to remain exchange of hot words between his father and the accused persons, but no brawl had ever taken place prior to the present occurrence. So in the light of these facts, it is difficult to agree with the above contention of learned counsel for the appellants – herein (accused) that there was no common intention on the part of the appellants – herein (accused) to assault the deceased and that they are liable criminally for their individual acts.

14. It was also argued by learned counsel for the appellants – herein (accused) that in fact deceased under the influence of liquor had sustained the alleged injuries due to his fall outside his house and that later on the appellants – herein (accused) were involved in this case falsely at the instance of complainant party in connivance with the police with some ulterior motive i.e. to grab the house property. In support of his contention, he has referred to the cross-examination of PW3 – Dr. Harbhajan Singh Hayer, who in his cross-examination stated that possibility of injury Nos.1 to 3 on the person of Bachittar Singh, the then injured, cannot be ruled out with repeated falls on a hard surface. Smell of alcohol was present in the breath of Bachittar Singh. Then the learned counsel for the appellants – herein (accused) has also referred to the cross-examination of PW6 – Dr.Jagroop Singh wherein he stated that possibility of injuries received by the deceased cannot be ruled out by fall on hard surface. Then in the same sequence, he voluntarily stated that possibility of some of the injuries received by deceased cannot be ruled out by fall on hard surface.

15. In the case in hand, no concrete evidence came on the record that deceased had fallen on hard surface after consuming liquor outside his house and sustained the alleged injuries. PW2 – Lakhmir Kaur in her cross-examination very frankly admitted that on the day of the occurrence, her husband had consumed the liquor, who used to take liquor occasionally. So the plea that deceased had suffered the alleged injuries due to fall after consuming liquor outside his house is not found to be justifiable one. Moreover, as above-said PW6 – Dr. Jagroop Singh in his cross-examination stated that possibility of some of the injuries found on the person of the deceased due to fall on hard surface cannot be ruled out. Then independent witness in this case could not be examined for the reason that the alleged occurrence took place during the night time in an enclosed residential house where complainant PW2 – Lakhmir Kaur was present and her son PW1 – Jasvir Singh also reached there subsequently and had witnessed the later part of the occurrence as above mentioned.

16. PW3 – Dr. Harbhajan Singh Hayer, medico legally examined the then injured Bachittar Singh when he was taken to Civil Hospital, Bathinda after the alleged occurrence on 15.5.2011. He found four injuries on his person as detailed in the medico legal report Ex.PW3/C. As per his opinion, kind of weapon used for all the injuries was blunt. Then on the police application Ex.PW3/H, he gave opinion Ex.PW3/I that possibility of injury Nos.1 to 3 mentioned in the MLR Ex.PW3/C with two weapons i.e. iron rod and handle of hand-pump cannot be ruled out.

17. PW6 – Dr. Jagroop Singh conducted post-mortem on the dead body of deceased Bachittar Singh on 16.5.2011 on police request

Ex.PW6/A. During post-mortem, he found the following injuries on the person of deceased:

1. Stitched wounds 4 in number ranging from 2 cm to 4 cm over the occipital area.
2. Stitched wound of size 10 cm on anterior aspect of left leg upper half.
3. Abrasion of size 2 cm x 2 cm on the posterior aspect of left shoulder joint.
4. Contusion of size 2 cm x 3 cm over left lateral aspect of lower part of chest.
5. On opening the chest, clotted and liquified blood was found on left thoracic cavity and left lung was found lacerated and on opening the peritoneal cavity, clotted and liquified blood was present in the cavity and spleen was found lacerated. Amount of blood in peritoneal cavity was about 400 ml.

In his opinion, cause of death in this case was due to haemorrhage and shock as a result of above mentioned injuries which were ante-mortem in nature and sufficient to cause death in the ordinary course of nature. Further, he produced the original post-mortem report of deceased and proved its carbon copy as Ex.PW6/C and the pictorial diagram showing the seats of injuries as Ex.PW6/D.

18. PW9 SI Sandeep Singh was the Investigating Officer of this case who was posted as SHO, Police Station Canal Colony, Bathinda on 16.5.2011. On receipt of information regarding admission of Bachittar

Singh in Civil Hospital, Bathinda, he went to said hospital where he recorded statement Ex.PW2/A of complainant Lakhmir Kaur (PW2). He made his endorsement Ex.PW9/A on her statement, on the basis of which FIR Ex.PW9/B with regard to present occurrence was registered. Further, he prepared the inquest report Ex.PW9/C of the dead body of deceased. Then he also got conducted post-mortem on the dead body of deceased vide his request Ex.PW6/A. Thereafter, he visited the spot and prepared its rough site-plan Ex.PW9/D. Then he picked up one pillow (MO4) and one *parna* (MO3) stained with blood from this site, which he took into possession vide memo Ex.PW2/B after converting the same into parcels duly sealed with the seal of 'SS'. Then he also proved the memo Ex.PW7/A vide which one parcel duly sealed containing clothes of deceased i.e. vest (MO5), trouser (MO6) and underwear (MO7) were taken into police possession. Then he also arrested accused on 16.5.2011.

During interrogation, accused Gurmit Singh suffered disclosure statement Ex.PW4/C regarding concealment of a handle of hand-pump (MO1) in the area of Railway track, Bangi Nagar which he got recovered as per his disclosure statement and the same was taken into police possession vide recovery memo Ex.PW4/E. Then he also deposed that accused Mukhtiar Singh during interrogation suffered disclosure statement Ex.PW4/D regarding concealment of an iron *saria* (MO2) near railway track in the area of Bangi Nagar which he later on got recovered and the same was also taken into police possession vide recovery memo Ex.PW4/F. Further, he proved the site-plans Ex.PW9/E and Ex.PW9/F of the places of above-said recoveries. He recorded the statements of

witnesses and on completion of the investigation, prepared the challan.

PW4 ASI Ajaib Singh and PW7 ASI Avtar Singh were the members of the police party headed by SI/SHO Sandeep Singh (PW9) during the investigation of this case. They have corroborated the above discussed statement of PW9 SI Sandeep Singh and as such there is no need to discuss their statements separately in order to avoid repetition.

PW5 Head Constable Gurcharan Singh got conducted the post-mortem on the dead body of deceased on 16.5.2011 and he tendered in his statement his duly sworn affidavit Ex.PW5/B as a part of his statement.

PW8 Head Constable Jeet Singh was posted as Head Constable/AMHC in Police Station Canal Colony, Bathinda on 16.5.2011. He tendered in his statement his duly sworn affidavit Ex.PW8/A as a part of his statement.

19. So far statement of DW1 – Pavittar Singh is concerned, the same does not inspire any confidence for the reason that at the relevant time, as per prosecution story, his father Bachittar Singh (since deceased) had been scolding him and his brother Gurtej Singh not to sit idle and to do some work, upon which appellants – herein (accused) interfered into the matter which resulted into the alleged occurrence.

DW2 – Parkash Kaur is the mother of the appellants – herein (accused). Both DW1 and DW2 remained mum after the alleged occurrence and they did not move any application before any higher authority for raising any kind of protest regarding the false implication of the appellants – herein (accused) in the instant case.

DW3 – Sobha Singh who was claiming to be Municipal Councilor of Municipal Corporation, Bathinda since the last 25 years also did not agitate the matter before any authority regarding the alleged false implication of the appellants – herein (accused) in this case.

20. So in the light of above discussion, no substance is found in this appeal for its acceptance. Hence, the same stands dismissed being found meritless. The judgment of conviction and order of sentence under appeal are upheld accordingly.

Copy of this order be sent to the quarter concerned for strict compliance.

09.11.2016
Gaurav Sorot/Brij

(T.P.S.MANN)
JUDGE

(GURMIT RAM)
JUDGE

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|----|------------------------------|-----|
| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |