

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-374-DB-2003

Date of decision: 06.01.2016

Pritam Singh

..... Appellant

Versus

State of Haryana

..... Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. *Whether Reporters of the 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?*

PRESENT: Mr. BS Saroha, Advocate for the appellant.

Mr. Dhruv Dayal, DAG, Haryana.

None for the complainant.

RAMENDRA JAIN, J.

This judgment shall dispose of CRA-D-374-DB-2003 and CRR-1307-2003, as both have arisen out of the same judgment of conviction and order of sentence dated 25.02.2003, passed by the learned Sessions Judge, Ambala. CRA-D-374-DB-2003, has been preferred by Pritam Singh-appellant for his acquittal and CRR-1307-2003 was filed by Gurmeet Kaur-complainant for enhancement of life imprisonment awarded to the appellant (in CRA-D-374-DB-2003) to capital punishment. For brevity, the facts are being extracted from CRA-D-374-

DB-2003.

2. The appellant was tried for committing offences punishable under Sections 302 and 307 of the Indian Penal Code (for short 'IPC') for intentionally causing death of his brother Sunder Singh on 11.05.1989 and also injuries to his brother Mohinder Singh with an intention to murder him in the area of village Mehtabgarh. The appellant was also tried for committing offence under Section 27 of the Arms Act for keeping in possession one spring actuated knife with the intent to commit aforesaid offences. Vide impugned judgment and order of sentence dated 25.02.2003, the learned Sessions Judge, Ambala held the appellant guilty and accordingly, convicted him under Sections 302/307 IPC and Section 27 of the Arms Act and sentenced him as under:-

1. Under Section 302 IPC

Imprisonment for life and a fine of ₹ 10,000/-. In default of payment of fine, further undergo rigorous imprisonment for a period of six months;

2. Under Section 307 IPC

Rigorous imprisonment for seven years and a fine of ₹ 10,000/-. In default of payment of fine, further undergo rigorous imprisonment for a period of six months; and

3. Under Section 27 of the Arms Act

Rigorous imprisonment for two years and a fine, of ₹ 500/-. In default of payment of fine further undergo rigorous imprisonment for a period of three months.

All the substantive sentences were ordered to run concurrently.

3. According to the prosecution story, Bachan Singh had three sons, namely; Pritam Singh-appellant, Sunder Singh (deceased) and Mohinder Singh. They all were serving in the Indian Army. The

marriage of their sister was to be solemnized on 07.05.1989. It was agreed that each of the brothers would contribute ₹ 10,000/- towards the expenses of marriage. Sunder Singh (deceased) and Mohinder Singh, contributed the aforesaid amount, but Pritam Singh-appellant did not contribute any money. Pritam Singh and his family members also did not attended the said marriage and thereafter, started their separate kitchen. On 11.05.1989, around 8.30 P.M., Sunder Singh (deceased) and his brother Mohinder Singh were having dinner in a room of their house. Their father Bachan Singh was also present in the courtyard at that time. Charanjit Kaur wife of Mohinder Singh was preparing the meals while Gurmeet Kaur (complainant) wife of Sunder Singh (deceased) was serving the food. Appellant came there and started abusing his brothers. He shouted and asked them to vacate the house immediately. Sunder Singh and Mohinder Singh told the appellant that they have every right to stay in the house which belonged to their father as they have contributed in the marriage of their sister. At this, the appellant got enraged and took out a knife from his pocket and gave 4-5 blows in the abdomen of Sunder Singh. When Mohinder Singh tried to rescue his brother Sunder Singh, he was also given knife blows in his abdomen by the appellant. As a result of the injuries received by them, Sunder Singh and Mohinder Singh fell on the ground. Their father Bachan Singh ran to rescue them, the appellant ran away from the spot along with his knife. Bachan Singh by arranging a truck with the help of co-villagers brought Sunder Singh and Mohinder Singh to Military Hospital, Ambala Cantt. accompanying the complainant-Gurmeet Kaur. However, Sunder Singh, succumbed to his

injuries on the way to hospital. Mohinder Singh was got admitted in Military Hospital, Ambala Cantt. The complainant returned back to home in the same truck, whereas Bachan Singh stayed in the hospital. On the next day, Gurmeet Kaur, had made statement before the police and lodged FIR Ex. PF. The post-mortem examination on the dead body of Sunder Singh was got conducted on 12.05.1989 at General Hospital, Ambala City. The investigation of this case was conducted by SI Parmal Singh, who died during the trial and, thus, he could not appear as a prosecution witness after remand of the case. The Investigating Officer had prepared rough site plan Ex. PS of the place of occurrence. He also collected the blood stained earth from the spot and took the same in police possession. The inquest proceedings were also conducted. The appellant was arrested. He got recovered a knife in pursuance of his disclosure statement Ex. PJ. After completion of investigation, report under Section 173 Cr.P.C. was filed against him in the Court. He was held guilty vide judgment dated 31.08.1992 and sentenced vide order dated 04.09.1992 under Sections 302/307 IPC and Section 27 of the Arms Act by the learned Additional Sessions Judge, Ambala.

4. Feeling aggrieved, the appellant preferred an appeal before this Court with a plea that since at the time of commission of offence, he was employed in the Army, therefore, the procedure required under Section 475 Cr.P.C. was necessarily to be followed, but the same was not followed. This Court vide its judgment dated 22.10.1993, set aside the aforesaid judgment of conviction and order of sentence against the appellant and remanded the case to the Committing Magistrate, with

liberty to commit the appellant for fresh trial after following the prescribed procedure under the Rules. However, by that time, the appellant was discharged from the Army after his conviction, but still an intimation was sent to the Army Authorities as required under Section 475 Cr.P.C. However, when no reply was received from them, finding no other option, the Committing Court by observing that the Army Authorities were not interested in prosecuting the present case, again committed the case for fresh trial to the Sessions Court vide order dated 22.05.1998.

5. The learned trial Court, on finding a *prima facie* case charge-sheeted the appellant under Sections 302/307 IPC and 27 of the Arms Act vide order dated 15.07.1998.

6. The prosecution in support of its case examined as many as 11 witnesses. It is pertinent to mention here that two witnesses, namely; Dr. NK Bedi and Mohinder Singh (injured) have been inadvertently mentioned as PW-8 and they were numbered as PW-8 and PW-8/A and PW-4 ASI Mewa Ram who was recalled for further examination was wrongly mentioned as PW-12.

7. After closure of the prosecution evidence, the statement of appellant under Section 313 Cr.P.C. was recorded, putting entire incriminating evidence brought on record against him to which, he denied and pleaded his innocence. In his defence, he has examined DW-1 Ravel Singh.

8. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court convicted

and sentenced the accused vide impugned judgment of conviction and order of sentence dated 25.02.2003, in the manner, indicated above in the opening part of this judgment.

9. PW-1 Dr. RP Sharma, medico-legally examined the appellant on 12.05.1989 and found as many as 7 superficial injuries except injury No. 5 on his person. Qua injury No. 5, the doctor observed that the same could be self-suffered or self inflicted one.

10. PW-2 Constable Karnail Singh, is the carrier of special report for delivery of the same to Illaqa Magistrate and concerned Police Officers. He simply tendered his duly sworn-in affidavit Ex. PF in this regard.

11. PW-3 Uday Bhan, Draftsman, has deposed that on 22.05.1989 at police request, he visited the house of complainant-Gurmeet Kaur and prepared scaled site plan Ex. PB of the place of occurrence with correct marginal notes.

12. PW-4 ASI Mewa Ram, was recalled for cross-examination as PW-12. He testified that on 12.05.1989, he as a Head Constable in Police Station Mullana was deputed by Investigating Officer/SHO SI Parmal Singh to get the post-mortem examination conducted on the dead body of Sunder Singh from Civil Hospital, Ambala Cantt. After doing the needful, the dead body of Sunder Singh was handed over to his relatives.

13. PW-5 HC Dharam Pal, in his duly sworn affidavit Ex. PE/1 testified that on 12.05.1989, he was posted as MHC in Police Station, Mullana. On the said day, the Investigating Officer/SHO SI Parmal Singh had deposited with him two parcels of blood stained earth duly

sealed with seal bearing impressions 'P.S.' and two parcels of blood stained clothes of Sunder Singh and Mohinder Singh duly sealed with seal bearing impressions 'P.S.J.' in this case. He further testified that on 14.05.1989, a parcel containing blood stained self actuated knife duly sealed with seal bearing impressions 'P.S.' was also deposited with him. He stated that on 17.05.1989, all these 5 parcels were handed over by him to Constable Satyawar for onward depositing the same with Forensic Science Laboratory (FSL), Madhuban. He further stated that so long as these parcels remained in his custody neither he nor anybody else was allowed to tamper with the same.

14. PW-6 Constable Satyawar, in his duly sworn-in affidavit Ex. PQ/1 testified that on 17.05.1989, MHC Dharam Pal had handed over to him 5 parcels sealed with the seals of P.S. and P.S.J. for depositing the same with FSL, Madhuban. On the same day, after depositing the above-stated parcels with the FSL, Madhuban, he had handed over the receipt to MHC Dharam Pal. He also testified that so long as these parcels remained in his custody neither he nor anybody else was allowed to tamper with the same.

15. PW-7 Gurmeet Kaur, supported the prosecution case in toto giving full details of the occurrence in the manner it took place.

16. PW-8 Dr. NK Bedi, proved the post-mortem report of Sunder Singh Ex. PG and Ex. PG/1 about the physical appearance of dead body of Sunder Singh brought by HC Mewa Ram and Constable Sukhdev Kumar (PW-9). He found following injuries on the dead body of Sunder Singh:-

- “1. There were two stab wounds over the front of abdomen. One was 1” x 1/4” situated 2” below the umbilicus and through which loops of gut was protruding. Clotted blood was present over the margins of wound.
2. Second penetrating incised wound was 3/4” x 1/2” and was situated half inch away and to the right side of the first wound. Through this wound omentum was coming out.
3. Incised wound 1” x 1/2” situated over the fronto lateral surface of left thigh situated 3” below the anterior superior iliac spine. Wound was 3” deep in the upward direction.”

The doctor further observed that on opening the abdomen, injury No. 1 was found to be retroperitoneal extending through the mesentery to the sacral prominatry, injuring the great weapon. There was small amount of blood present in the cavity, but a huge retroperitoneal hematoma extending from the liver side to the both walls of pelvis. Loops of jejunum which were protruding out were found injured. Stomach was found healthy and empty. Small gut was found injured as described and contained semi-digested food. Urinary bladder was healthy and empty. All other organs were healthy. As per opinion of the doctor, the injured died of haemorrhage and shock as result of stab abdomen (injuries No. 1 and 2). All the injuries were ante mortem in nature and were sufficient to cause death in natural course of life.

17. PW-8/A Mohinder Singh, is the real brother of Sunder Singh (deceased). This witness though was injured by his brother Pritam Singh-appellant, but he turned hostile.

18. PW-9 HC Sukhdev Kumar, in his cross-examination by learned Public Prosecutor testified about the disclosure statement of the

appellant and in pursuance thereof effecting the recovery of weapon of offence i.e. self actuated knife. He testified that on 14.05.1989, as Constable he accompanied SI/SHO Parmal Singh and got recovered a knife from village Mullana, in pursuance of disclosure statement of the appellant Ex. PJ.

19. PW-10 Dr. Om Parkash, proved the report Ex. PK mentioning the account of injuries found by him on the person of PW-8/A Mohinder Singh.

20. PW-11 Dr. Arun Chopra, also proved the following injuries on the person of PW-8/A Mohinder Singh:-

- “1. He had 2” long penetrating wound over the lower part of left side of chest, near the lateral part of trunk.
2. Another injury 2” long oblique wound present over the left axilla.
3. Two superficial wounds approximately 1” x 1/2” present over the sternum.
4. A 2” long wound over the outer aspect of left arm.
5. Right little finger was partially amputated. The diagnosis is multiple injuries with penetrating injury thoraco-abdominal (left).

PW-11 Dr. Arun Chopra, testified that the injury statement Ex. PK was correctly prepared by him and was signed by him as well. He further stated that after resuscitation, the patient was taken up for life saving surgery. There was little amount of blood present in the abdominal cavity. The spleen was partially lacerated and through the thoraco abdominal wound omentum was protruding out. The bleeding was controlled and the thoraco abdominal wound was repaired. Post operatively patient made uneventful recovery. He further sated that on

police application Ex. PL dated 02.06.1989, he had given his opinion Ex. PL/1 that injuries No. 2, 3, 4 and 5 were simple and injury No. 1 on the person of Mohinder Singh (PW-8) was dangerous to life. The injuries were caused by a sharp edged weapon i.e. knife and the same were possible to have been caused by knife Ex. P-1. This witness has also deposed that he had issued death certificate of Sunder Singh Ex. PM.

21. We have heard Mr. BS Saroha, Advocate for the appellant and Mr. Dhruv Dayal, Deputy Advocate General, Haryana and have also gone through the entire material on record with their able assistance.

22. Learned counsel for the appellant assailed the finding of learned trial Court by submitting that the appellant has wrongly been convicted as there was no eye-witness account. Some unknown persons have cause injuries to deceased Sunder Singh and his brother Mohinder Singh. The material witness injured Mohinder Singh (PW-8/A) had turned hostile before the learned trial Court. The other material witnesses, namely Bachan Singh who was none else, but father of the appellant as well as the deceased and injured, Charanjit Kaur w/o Mohinder Singh (PW-8), Jagir Singh, Sohan Singh and Surjit Singh were not examined for the reasons best known to the prosecution, because there was no reason for them to not to support the prosecution version after the appellant had murdered his brother Sunder Singh and caused injuries to PW-8/A Mohinder Singh. It was further contended that the learned trial Court has wrongly given undue weight to the testimony of PW-7 Gurmeet Kaur (complainant) though her deposition was completely unreliable and false. Even otherwise, she had made material

improvements over her original version. Her statement was completely inconsistent with the medical evidence. Her not staying with the dead body of her husband Sunder Singh in the hospital and her stay at home for the whole night was highly un-natural rendering her testimony unbelievable and unreliable. There was no motive for the appellant to commit the murder of his real brother Sunder Singh and causing injuries to Mohinder Singh. In fact, the learned trial Court had failed to appreciate that PW-7 Gurmeet Kaur was not present at the time of alleged occurrence being away to another village in connection with the marriage of her relative.

23. Learned State counsel has vehemently opposed the appeal and supported the revision filed by the complainant by submitting that testimony of PW-7 Gurmeet Kaur (complainant) is well convincing and reliable to prove that it was the appellant only, who had inflicted injuries to her husband to which he succumbed on the way to hospital. Despite her lengthy cross-examination, the learned defence counsel could not put even a single dent in the prosecution story.

24. We have given our thoughtful consideration to the matter.

25. The entire prosecution story revolves around the testimony of PW-7 Gurmeet Kaur wife of Sunder Singh (deceased). According to her, Sunder Singh her deceased husband were three brothers. All of them have agreed to contribute ₹ 10,000/- each for the marriage of her sister-in-law. Her husband and brother-in-law Mohinder Singh (PW-8) have contributed the same, but the appellant did not. Even he did not participate in the marriage and also separated his mess. Around 8.30

P.M. on 11.05.1998, when her husband and brother-in-law were taking meals in a room and Bachan Singh, her father-in-law was sitting in the courtyard of the house, appellant-Pritam Singh came there from outside and started abusing his brothers and shouted them to vacate the house in which they were living. Her sister-in-law Charanjit Kaur, was preparing the meals, whereas she was serving the same. On refusal by her husband Sunder Singh and Mohinder Singh (PW-8) to vacate the house, the appellant got enraged and took out a knife from his pocket and gave several blows of it in the abdomen of both Sunder Singh and Mohinder Singh. On intervention of her father-in-law Bachan Singh, the appellant fled away from the spot. Her statement about the nature of injuries given by the appellant to her deceased husband and PW-8 Mohinder Singh with the knife is fully corroborated by the medical evidence.

26. PW-8 Dr. NK Bedi, stated that two incised wounds were found in the abdomen and one incised wound was found on the left thigh of deceased Sunder Singh, caused with a sharp edged weapon. PW-10 Dr. Om Parkash and PW-11 Dr. Arun Chopra, found 5 injuries on the person of PW-8 Mohinder Singh, to have been caused with a sharp edged weapon. The history narrated to them by Mohinder Singh (PW-8) that some un-known assailants had attacked them is completely unfounded and baseless, because nothing has been brought by the appellant in his defence that his brothers Sunder Singh and Mohinder Singh had any enmity with anyone in the village. PW-8 Mohinder Singh, had intentionally turned hostile in connivance with his wife Charanjit Kaur and father Bachan Singh with an intent to save the appellant who is none

else, but his real brother. From the very beginning, their father Bachan Singh and Mohinder Singh (PW-8) might have made up their mind to save the appellant being their real son and brother respectively and for that reason they malafidely introduced the story of attack by some unknown assailants to cause injuries to Sunder Singh and PW-8 Mohinder Singh. So the question of attacking by unknown assailants does not arise at all. The foolproof testimony of PW-7 Gurmeet Kaur cannot be brushed aside simply, because PW-8 Mohinder Singh, turned hostile and did not support the prosecution story, when her testimony remained unblemished despite lengthy cross-examination by the learned defence counsel. Her conduct of remaining at home during the entire night after the occurrence is not un-natural, because she could not give any help to her deceased husband lying in the hospital. There was no reason of her to stay in the hospital, when her husband had died on the way to hospital. Since her children were present at home alone and no other family member was there to look after them, so it was quite natural to return home in the same truck in which the injured were shifted to the hospital.

27. The defence of the appellant that Gurmeet Kaur was not present at the time of occurrence as she had gone to attend the marriage of the son of DW-1 Ravel Singh, having taken place on 11.05.1989. DW-1 Ravel Singh is none else, but is the husband of mother's sister of Pritam Singh-appellant, Sunder Singh (deceased) and Mohinder Singh (PW-8). The learned trial Court has rightly observed that if the marriage of son of Ravel Singh was actually fixed for 11.05.1989, in that

eventuality, the appellant, as well as Bachan Singh, injured Mohinder Singh (PW-8) and Sunder Singh (deceased) were also expected to participate in the marriage being close relative. As per the defence version, said marriage has to be solemnized in village Korva Khurd which is also the parental village of PW-7 Gurmeet Kaur and if she would have been present there at the time of occurrence, in that event, she must have accompanied her parents or family members while returning to her matrimonial home or for approaching the police. Her going alone to police station in the early hours of morning at about 5.30 A.M. on the next very day i.e. on 12.05.1989 to lodge the report falsifies the statement of DW-1 Ravel Singh, who testified that Gurmeet Kaur had left her village Korva Khurd at 7.00 A.M. on 12.05.1989.

28. The delay in lodging the FIR has been well explained by the prosecution. PW-7 Gurmeet Kaur, had testified that her husband had succumbed to his injuries on the way to hospital, so she returned to the house in the night as there was no male member in the family to look after her children. She stayed at house in the night and went to the police station on the next day in the early hours to lodge the FIR. She had no male member at the house with whom she could discuss the matter or make deliberations. In these circumstances, her statement before the police was quite natural and truthful. Charanjit Kaur w/o Mohinder Singh (PW-8) and Bachan Singh have rightly been given up by the prosecution having been won over, because their testimony would have corroborated the prosecution story resulting into conviction of the appellant who is none else, but their close relative. The history of assault

disclosed by PW-8 Mohinder Singh and Bachan Singh before the doctors was contradictory to each other, because according to Mohinder Singh, they were attacked by one unknown assailant whereas according to Bachan Singh, his sons were attacked by two assailants.

29. The improvements made by Gurmeet Kaur in her statement as pointed out by learned counsel for the appellant that PW-7 Gurmeet Kaur did not state before the police while lodging the report that her father-in-law was present at the time of occurrence or that there was electric light in the room as well as in the courtyard relates to insignificant aspect of the case. It cannot be expected from a lady that too of rural background, whose husband has expired to narrate each and every minute detail at the time of occurrence. Even otherwise, it hardly makes any difference if PW-7 Gurmeet Kaur, did not tell the police that electricity light was on in the room as well as in the courtyard at the time of occurrence or that her father-in-law was also present there, because Bachan Singh, father of the appellant himself has admitted his presence at the spot as he arranged a truck from the nearby brick kiln and brought his injured sons, namely; Sunder Singh and Mohinder Singh to the hospital. It is pertinent to mention here that PW-7 Gurmeet Kaur was re-examined on 23.04.2001, after the occurrence having taken place on 11.05.1989. After such a long gap, a witness cannot be expected to narrate meticulous details of the occurrence. She firmly stood the test of her cross-examination.

31. The knife was got recovered by the appellant himself in pursuance of his disclosure statement Ex. PJ. He categorically stated

before the police that he kept concealed a self actuated spring knife under the heap of wood lying on the roof of kotha of tube well with which he injured his brothers Sunder Singh and Mohinder Singh. He further stated that except him nobody had the knowledge about the same and he can get recovered the same after demarcation.

32. PW-9 HC Sukhdev Kumar, in his cross-examination had categorically testified that on 14.05.1989, he was posted as Constable at Police Station, Mullana. He stated that during investigation of the case, the appellant present in Court made a disclosure statement to the effect that he had kept concealed one self actuated spring knife in the fields under the heap of wood lying on the roof of tube well kotha. Statement of the appellant was recorded in his presence by the IO/SHO SI Parmal Singh and he has put his signatures in token of its correctness.

33. Causing of injuries with knife is not disputed either by the prosecution or by the appellant. PW-7 Gurmeet Kaur, has specifically identified the knife Ex. P-1 used in the commission of crime. She has categorically stated that knife Ex. P-1 was the same by which the appellant had inflicted injuries on the person of her husband as well as on the person of PW-8 Mohinder Singh.

34. Lastly, learned counsel for the appellant half heatedly argued that it was a case of scuffle in which the appellant also received injuries. However, this argument is completely devoid of any merit, because the appellant had taken a categorical stand that 7 injuries were found on his person caused to him by the police at the police station. Hence, the question of scuffle does not arise at all. Even otherwise all the injuries as

discussed above are simple and superficial in nature.

35. In view of the above discussion, the instant appeal is completely devoid of any merit and, therefore, dismissed. This is not the rarest of the rare case, therefore, we find no merit in the revision petition and accordingly, the same is also dismissed.

**(T.P.S. MANN)
JUDGE**

**(RAMENDRA JAIN)
JUDGE**

January 06, 2016

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