

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

Crl. Appeal D-408-DB of 2003
Date of Decision : February 09, 2016

Gurjant Singh and another

.....Appellants

VERSUS

State of Punjab

.....Respondent

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

Present : Mr. A.D.S.Jattana, Advocate
for the appellants.

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

Mr. Tarundeep Kumar, Advocate for
Mr. D.S.Pheruman, Advocate
for the complainant.

T.P.S. MANN, J.

The appellants, namely, Gurjant Singh and Rachhpal Singh, sons of Niranjan Singh, residents of village Pidli, District Amritsar have filed the present appeal for challenging the judgment and order dated 26.2.2003 passed by learned Additional Sessions Judge, Amritsar.

Vide impugned judgment and order, the trial Court convicted appellant-Gurjant Singh under Section 302 IPC and appellant-Rachhpal Singh under Section 302 read with Section 34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs. 1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.

According to the prosecution, on 27.10.2000 at about 7.30 a.m., complainant-Baldev Singh, his brother Shamsher Singh and their father Surjit Singh were returning home from the fields after answering the call of nature. At that time, Shamsher Singh was going ahead of complainant-Baldev Singh and his father Surjit Singh by about 15/20 karams. When Shamsher Singh reached near the kacha passage leading to the village and adjacent to the paddy fields belonging to one Mukhtiar Singh, appellants Rachhpal Singh and Gurjant Singh, residents of the village while on foot on kacha path came from the side of the village. At that time, Gurjant Singh was pulling a cycle with the help of his hand. On reaching near Shamsher Singh, Rachhpal Singh raised a lalkara that he be caught hold of and taught a lesson for calling the Panchayat. Gurjant Singh took out his gatra kirpan and gave a blow with the same in the chest of Shamsher Singh, who fell down on the ground. Gurjant Singh gave another blow with the gatra kirpan hitting Shamsher Singh on his mouth. When Shamsher Singh raised an alarm that he be saved, complainant-Baldev Singh and his father Surjit Singh rushed to the place and on their challenge, Gurjant Singh, after throwing his cycle and carrying his kirpan and his brother Rachhpal Singh @ Kala ran away from the spot towards village Sheron. On the cycle there was a brief case containing medicines. The

complainant and his father went forward and within their sight, Shamsher Singh succumbed to the injuries. The motive for committing the crime was that about 3/4 months back, Gurjant Singh had teased the complainant's wife Daljit Kaur and on that account a Panchayat was called wherein Swaran Singh, Sarpanch and other respectable persons got the matter compromised in the Panchayat. Despite the same, Gurjant Singh etc. used to nurse a grudge that they had been insulted on being called in the Panchayat. Both Gurjant Singh and Rachhpal Singh had committed the murder of Shamsher Singh in furtherance of their common intention. After leaving his father Surjit Singh at the spot for guarding the dead body of his brother, complainant-Baldev Singh proceeded for Police Station Sadar, Tarn Taran, but came across SI Balbir Singh at the canal bridge of village Rasulpur, who alongwith his fellow officials was present there in connection with patrolling. SI Balbir Singh recorded statement Ex. PE of complainant-Baldev Singh on 27.10.2000 at 10.30 a.m. As the statement revealed commission of offences under Sections 302/34 IPC, SI Balbir Singh while making his endorsement Ex. PE/1, forwarded statement Ex. PE through Constable Gurdip Singh to Police Station Sadar, Tarn Taran for registration of the case. On its basis, FIR (Ex.PE/2) No. 136 dated 27.10.2000 at 10.50 a.m. was registered by ASI Lakhbir

Singh against the appellants. Copy of the special report was handed over to Constable Pritpal Singh, who delivered the same to the Sub Divisional Judicial Magistrate, Tarn Taran on the same day at 7.10 p.m.

Further case of the prosecution is that SI Balbir Singh alongwith other officials accompanied complainant-Baldev Singh to the place of incident. He prepared inquest report Ex. PB on the dead body of Shamsher Singh. Blood stained earth was lifted from the spot and taken into possession vide memo Ex. PK. One cycle and one brief case containing medicines were lifted from the spot and taken into possession vide memo. Ex. PL. Brief case Ex. P1 was found to contain stethoscope Ex. P2, blood pressure apparatus Ex. P3, tin box containing two syringes Exs.P4 to P6, Aluminium container Ex. P7, injections Exs. P8 to P17, capsules Exs. P18 to P24, injection ampules Exs. P25 to P34, three plastic containers containing tablets Exs. P35 to P37, two scissors Exs. P38 and P39 and thermometer Ex.P40. Rough site-plan Ex. PM of the place of incident was prepared. The dead body was sent through Constable Satnam Singh and HC Harprabhjit Singh to Civil Hospital, Tarn Taran for post-mortem alongwith application Ex. PA. Injury report Ex. PN was also prepared regarding the injuries on the dead body of Shamsher Singh. Statements of the witnesses were recorded. The house

of the appellants was searched but the same was found locked. The case property with seals intact was deposited with the MHC. Supplementary statement of complainant-Baldev Singh was also recorded on the same day by SI Balbir Singh. On 28.10.2000, the clothes i.e. pant Ex. P42, underwear Ex. P43 and baniyan Ex.P44 belonging to the deceased were made into a parcel and taken into possession vide memo. Ex. PO.

Further case of the prosecution is that on 30.10.2000, Gurjant Singh-appellant was arrested. On being interrogated on 1.11.2000 by SI Balbir Singh, he disclosed that he had kept concealed small kirpan in his residential house under the heap of toori and offered to get the same recovered. Disclosure statement Ex. PQ of Gurjant Singh was recorded. Pursuant to the same, Gurjant Singh got recovered one kirpan Ex. P45, which was made into a parcel and taken into possession vide memo. Ex. PQ/2. Rough site-plan Ex. PR of the place of recovery of kirpan was also prepared. Rachhpal Singh-appellant was, however, found to be innocent by the police and, accordingly, while showing his name in column 2 of the report under Section 173 Cr.P.C., charge-sheet was presented against Gurjant Singh alone. The case was, thereafter, committed to the Court of Sessions where charge under Section 302 IPC was framed against Gurjant Singh, who pleaded not guilty and claimed trial.

In support of its case, the prosecution examined complainant-Baldev Singh as PW1, who testified on the lines of the statement made by him before the police. It was followed by an application under Section 319 Cr.P.C. being moved by the learned Public Prosecutor for summoning Rachhpal Singh to face trial alongwith Gurjant Singh. Vide order dated 23.4.2001, the trial Court allowed the application and ordered summoning of Rachhpal Singh as additional accused. Upon his appearance, charge under Section 302 IPC was framed against Gurjant Singh-appellant and under Section 302 read with Section 34 IPC against Rachhpal Singh-appellant. Both of them pleaded not guilty and claimed trial.

In support of its case, the prosecution examined six witnesses.

PW1 Dr. Dilbagh Singh testified that he conducted post-mortem on the dead body of Shamsheer Singh on 28.10.2000 at 9.15 a.m. and found as under:-

“Length of the body was 5' – 8”. Mark of ligature on neck and dissection etc. nil. It was dead body of young male, well built and nourished, wearing gulabi colour shirt, blue colour pant jean, biscuit colour underwear with red colour dharian and white baniyan. The rigor mortis was present on all parts of the body. Post mortem staining was developed on depending parts. Eyes and mouth were closed.

On examination following injuries were found by him:-

1. Penetrating incised wound of 2 x ½ cm and 7.4 cm in depth was present, 3 cms medially to left nipple on the left side of chest, wedge shaped, clean cut and inverted margins with clotted blood, piercing obliquely intercostal muscle, pericardium and wall of heart in right upper region, 1200 mls clotted blood and fluid was present in the pericardial cavity.

2. A lacerated wound of 0.3 x 0.2 cms present on the inner side of the lower lip, placed obliquely opposite the lower central incisor teeth.

All the injuries were ante-mortem in nature.

Thorax, pleura, larynx, trachea were N.A.D. Right and left lungs were pale. Pericardium, heart and large vessels as described. 60 mls stomach fluid was present. Chyme and gases were present. Faecal matter and gases were present. Liver, kidneys and spleen were pale. Bladder was empty.”

He further deposed that the cause of death in his opinion was due to haemorrhage and shock due to injury to heart, i.e. injury No.1 which was sufficient to cause death in the ordinary course of nature. The probable time that elapsed in between injuries and death was immediate and between death and post-mortem was within about twenty four hours. He proved carbon copy of post-mortem report Ex. PC.

PW2 Constable Pritpal Singh tendered in evidence his affidavit Ex. PD.

Complainant-Baldev Singh, who was examined by the prosecution as PW3, deposed about the occurrence as was narrated by him in his statement Ex. PE. He also mentioned about the motive which impelled the two accused to open the assault and cause injuries to his brother Shamsheer Singh.

PW4 Surjit Singh, father of complainant-Baldev Singh and deceased Shamsheer Singh, corroborated the testimony of PW3 Baldev Singh.

PW5 Constable Harprabjit Singh tendered his affidavit Ex. PJ in evidence.

PW6 SI Balbir Singh, Investigating Officer, testified about the various steps taken by him during the investigation of the case.

After hearing learned counsel for the parties, the trial Court accepted the prosecution case and convicted and sentenced the appellants, as mentioned above.

We have heard learned counsel for the parties and scanned the evidence with their able assistance.

According to learned counsel for the appellants, the testimonies of PW3 Baldev Singh and PW4 Surjit Singh in support of the ocular account cannot be accepted as they

happened to be closely related to the deceased, being his brother and father, respectively. Their presence at the time of the occurrence was highly improbable and unnatural. It is also submitted that there was a delay of about 12 hours in sending the special report to the Ilaqa Magistrate. In fact, the FIR had been lodged very late and the same was later on ante-timed. It is also submitted that Swaran Singh, Sarpanch of the village, to whom PW3 Baldev Singh had narrated the occurrence soon after the incident, has not been examined. It is also submitted that no evidence has been led by the prosecution to prove the motive for the commission of the offence. Finally, it is submitted that the part and participation of Rachhpal Singh appellant in the commission of the crime has not been proved by the prosecution.

On the other hand, learned State counsel has submitted that the prosecution has led cogent and convincing evidence to connect the appellants with the commission of the crime.

Having heard learned counsel for the parties and on going through the record, this Court finds that merely because Baldev Singh and Surjit Singh happen to be the close relatives of deceased Shamsher Singh, being brother and father, respectively, is not sufficient to discard their testimonies, especially when their presence at the time and place of the

incident was probable and natural and their testimonies are duly corroborated by the medical evidence. It was the case of the prosecution that on 27.1.2000 at about 7.30 a.m., deceased Shamsheer Singh, alongwith his brother Baldev Singh and their father Surjit Singh, after answering the call of nature were returning to the village. At that time deceased Shamsheer Singh happened to be going ahead of them about 15/20 karams. The defence tried to build its case that the deceased alongwith his brother and father was not required to go outside for answering the call of nature by suggesting to PW3 Baldev Singh and PW4 Surjit Singh that there was latrine in their house. That suggestion was, however, denied by both of them. If that be so, then there is nothing improbable or unnatural in the deceased and his brother and father going to the fields in the morning for answering the call of nature and, thereafter, returning home when the occurrence in question had taken place.

According to the prosecution, when Shamsheer Singh, who was walking ahead of his brother and father by about 15/20 karams and reached near the kacha passage leading to the village, the two appellants came from the side of the village. On reaching near Shamsheer Singh, Rachhpal Singh raised a lalkara to catch hold of him and to teach a lesson for calling the Panchayat. On this, Gurjant Singh took out his gatra kirpan and

gave blow with the same in the chest of Shamsheer Singh and on account thereof, he fell down on the ground. Gurjant Singh then gave another blow with the gatra kirpan hitting Shamsheer Singh on his mouth. Soon after the occurrence, complainant Baldev Singh, after leaving his father Surjit Singh at the spot for guarding the dead body of his brother, proceeded for the Police Station but came across SI Balbir Singh on the canal bridge of village Rasulpur. Complainant Baldev Singh made his statement Ex. PE, which was recorded by SI Balbir Singh on 27.10.2000 at 10.30 a.m. Soon thereafter, SI Balbir Singh reached the place of incident and after preparing inquest report Ex. PB, sent the dead body for postmortem. It was PW1 Dr. Dilbagh Singh, who had conducted postmortem and found two injuries on the dead body. Injury No.1 was a penetrating incised wound inflicted with gatra kirpan in the left side of the chest, while injury No.2 was a lacerated wound on the inner side of lower lip. The cause of death in his opinion was due to haemorrhage and shock on account of injury to heart, which was sufficient to cause death in the ordinary course of nature. Probable time that elapsed between injuries and death was immediate and between death and postmortem was about 24 hours. From the medical evidence, it is, thus, made out that the injuries on the dead body were the result of giving of two blows with a gatra kirpan by

appellant Gurjant Singh. During his cross-examination, Dr.Dilbagh Singh ruled out possibility of injury No.2 found on the dead body to have been suffered by a fall on account of injury No.1. Merely because he stated that if some injury was caused on the lower lip with a blunt weapon, then injury should come on the outer surface of the skin also and he had not observed any injury on the outer side of the lip of the dead body is not sufficient to hold that injury No.2 had not been caused by gatra kirpan wielded by Gurjant Singh appellant.

As regards the lodging of the FIR, it may be noticed that after the occurrence had taken place on 27.10.2000 at 7.30 a.m., statement Ex. PE of complainant Baldev Singh was recorded by SI Balbir Singh at 10.30 a.m. On its basis, FIR (Ex. PE/2) came to be registered at 10.50 a.m. There was, thus, no delay, whatsoever, in lodging of the FIR. At the same time, it may be noticed that after the registration of the FIR, the special report was handed over to Constable Pritpal Singh, who delivered the same to the Sub Divisional Judicial Magistrate, Tarn Taran on the same day at 7.10 p.m. Apparently, there was some delay in the delivery of the special report. However, its effect would be discussed in the later part of this judgment.

Learned counsel for the appellant has submitted that neither the clothes of PW3 Baldev Singh and PW4 Surjit Singh

nor their hands were shown to have been stained with blood and, therefore, it cannot be said that they were present at the spot at the time of the occurrence. However, only PW4 Surjit Singh was asked in that regard and he replied that he had tried to save the life of his son Shamsheer Singh but his hands and clothes did not get any blood stains. Under these circumstances, the argument of the defence counsel does not carry any weight.

As regard the non-examination of Swaran Singh, Sarpanch to whom complainant Baldev Singh had narrated the occurrence just after the incident, suffice it to say that he was not an eye-witness of the occurrence and, therefore, not required to be examined by the prosecution in support of its case, more so, when the testimonies of PW3 Baldev Singh and PW4 Surjit Singh are worthy of acceptance and their presence at the spot natural and probable.

According to the prosecution, it was Gurjant Singh appellant who had teased the wife of complainant Baldev Singh and the matter was taken to the Panchayat where Gurjant Singh was reprimanded. It has also come in the evidence that the Panchayat had remarked that the face of Gurjant Singh may be blackened. Merely because Daljit Kaur wife of complainant Baldev Singh was not joined in the investigation is not sufficient to hold that there is no corroboration to the act of Gurjant Singh

appellant in teasing her. Further, Shamsheer Singh deceased happens to be brother of complainant Baldev Singh and both of them living together. In such a situation, the accused made Shamsheer Singh the target, especially when they came across him, who was going ahead of his brother and father by 15/20 karams at the time of the occurrence.

In view of the above, no case is made out for any interference in the conviction and sentence of Gurjant Singh appellant. At the same time, it may be noticed that Rachhpal Singh appellant was empty handed at the time of the occurrence. Rachhpal Singh had no motive to commit the crime. Merely because he happened to be brother of Gurjant Singh is not sufficient to hold that he was also nursing a grudge against the complainant party. Further, PW3 Baldev Singh during his cross-examination admitted that in his statement before the police he did not state that Rachhpal Singh while raising a lalkara had exhorted his brother Gurjant Singh to teach Shamsheer Singh a lesson. He was also found innocent during the investigation of the case and later on summoned as an additional accused. Apart from the same, as noticed above and taking into consideration the delayed receipt of the special report by the Ilaka Magistrate, possibility of Rachhpal Singh appellant being falsely named as accused in the case cannot be ruled out.

Resultantly, the conviction of appellant Gurjant Singh under Section 302 IPC and his sentence of imprisonment and fine are upheld. At the same time, the conviction and sentence of imprisonment and fine imposed upon appellant Rachhpal Singh under Section 302 read with Section 34 IPC are set aside and he is acquitted of the charge against him.

The appeal is, accordingly, disposed of.

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

February 09, 2016
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**(RAMENDRA JAIN)
JUDGE**